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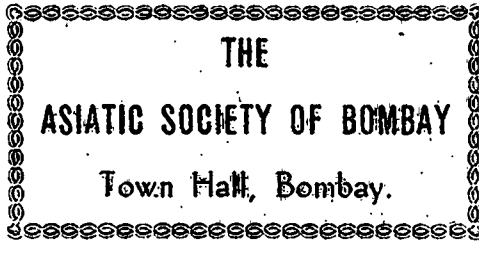

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HISTORY, PRINCIPLE, AND FACT;

IN RELATION TO

THE IRISH QUESTION.

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LETTERS

ADDRESSED TO THE "MANCHESTER EXAMINER AND TIMES,"

BY

HENRY DIX HUTTON,

BARRISTER-AT-LAW.

Fatti sicur, chè noi siamo a buon punto:
Non stringer ma rallarga ogni vigore.—DANTE.

Inceptum est: retro abire non licet, nec relinquere oportet.—THOMAS A' KEMPIS.

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HISTORY, PRINCIPLE, AND FACT, IN RELATION TO THE IRISH QUESTION.

PREFATORY.

"The predominance of a *relative* philosophy is specially suited to social phenomena, as being more complex, and more susceptible of modification, than those of the material world; a view confirmed by the increasing resistance which *the historical spirit* offers to absolute conceptions."—AUGUSTE COMTE.

I APPROACH the Irish problem with feelings of anxiety, shared, I believe, in Ireland by those who appreciate most highly the dispositions of the English people, and desire that the public and statesmen of England should rise to the full "height of that great argument," to borrow the language of one of her noblest sons, which has been so well inaugurated by the Irish Church Act of 1869. It is true that thoughtful and true-hearted Englishmen, and Englishwomen no less, are aware that an Irish problem does exist which appeals for its solution to the just pride, the honour, and the conscience of England. But I venture to doubt whether the English public, or even the foremost English statesmen, have yet realised the extent and the extreme difficulty of the Irish problem, or consequently the heavy tax which its solution must lay upon the morality and intellect of England. I say this advisedly, and with a full conviction of truth, having not merely made a long and careful study of the subject in Ireland, but also enjoyed considerable opportunities of ascertaining, through personal intercourse and local observation, the management of landed property in England, and the prevailing ideas of the best disposed and most intelligent Englishmen, respecting the relations of land-

lord and tenant. It may be useful, before entering upon the special subject of these letters—the Irish Land Question—to state briefly my reasons for holding the view just mentioned.

The Irish problem, at all events, embraces three matters—the Church, the Land, and Education. So much is admitted by everyone, yet it is well to consider the connection of these three aspects of an indivisible problem, with a view to the aids or obstacles thus created for the work that remains to be done. The Church question, as a subject for legislation, obviously took the precedence. It was comparatively easy of comprehension, for the injustice was plain of perpetuating a system imposed by conquest, maintained as a badge of ascendency, and which appropriated the trust funds of the State to a mere fraction of the Irish people, the section, too, whose wealth and social position best qualified its members for supporting their own Church. The position of the Anglican Church in Ireland was, besides, as compared with her position in England, so plainly exceptional, that warm supporters of the latter could afford, and might even feel it safer, to surrender the former. For Ireland, also, the Church question, if not the first in importance, was practically the first in time. It may be true that since the transfer of the payment of tithes from the occupier to the owner, this grievance did not come home to the mass of the Roman Catholic population, in the sense that the land question must do in a country like Ireland, where manufactures are few, and agriculture forms the staple pursuit. But the middle and upper ranks among Roman Catholics felt it almost unanimously. Even the characteristic sentiments of the Protestant population facilitated the settlement of the Church question on a broad and satisfactory basis, for they—both Anglicans and Presbyterians—were as strongly opposed as the English Liberals to a re-endowment which, if sanctioned, must have allotted a share, and the largest share, to the Roman Catholic population in Ireland.

But if the Church question demanded the earliest solution, it seems to me equally natural and desirable that the Education question should yield precedence to that which concerns the land. The latter directly affects the interests of one-half the population of Ireland, as being tenant-farmers or belonging to the families of such, and indirectly concerns the rest of the Irish people, from

the labourer to the capitalist. It possesses, also, the deepest sympathies of the Catholic parochial clergy of Ireland, who, mainly sprung from the people, and, themselves the sons of Irish farmers, well know the paramount and universal anxiety for a safe tenure and security for the fruits of industry. Anyone desiring to understand this identity of feeling and interest between the priest and the people would do well to read, not the weak sentimentalities and plausible fictions of Mr. Steuart Trench's *un*-"Realities of Irish Life," but the "Poor Scholar" of our late distinguished novelist, Carleton.

The Irish Education question is one of such difficulty as to require an undivided attention, and demands all the light that can be thrown upon it from every quarter. The corresponding English question is still under discussion, and it would be rash to predict what solution may there be accepted by the majority outside or within Parliament. The Commission appointed to report on Primary Education in Ireland is still engaged upon the investigation. I should therefore feel it premature to offer an opinion, in the absence of materials for judgment, which at present do not exist in completeness. I may, however, observe that with strong sympathies in favour of providing a general and purely secular State-education for the masses, as the system most desirable, both on intellectual and moral grounds, I cannot shut my eyes to the injustice and impolicy of forcing such a system too far beyond the point which the public have reached. It seems to me rather an ideal to be aimed at, as conformable to the deepest and growing tendencies of modern society, than a rigid rule to be enforced upon an unwilling and unprepared population. If this view be just and needful for England, much more does it require to be borne in mind as regards Ireland. Whatever limitations may be imposed as just and necessary by English denominational feelings, must be much more called for in a country where the history of centuries has fostered and intensified such sentiments. The complete establishment of religious equality must, I fully believe, work a great *ultimate* change for the better, but it is idle to suppose that it can do so to any appreciable extent for many years. I regret to be obliged to add that my observation tends to the conclusion that the recent legislation, though accepted in a

praiseworthy spirit by portions of the disestablished and disendowed Church, has excited, in other and considerable portions of its members, bitter feelings very unfavourable to harmonious action in matters of education. Without therefore prejudging a difficult question, it appears to me, at least, very doubtful whether Irish history and actual circumstances, when carefully examined and fully understood, justify the application of a more advanced, possibly even of so liberal system of education as that which exists, or, after full discussion, may be adopted for England.

The Church, the Land, and Education, then, constitute three essential elements, distinct, but closely connected, of the Irish question. But I am deeply convinced that the real extent of the Irish problem cannot be understood, nor its depths fathomed, unless we also largely take into account another element, as yet very insufficiently appreciated in England, but which fully deserves the prominence accorded to it by Professor Goldwin Smith, Dr. Congreve, and Dr. Bridges in their valuable publications on Ireland. I mean that of Irish national sentiment. It is true we are still a divided people. The hero of Goethe's masterpiece laments that two souls dwell in his breast, each urging him in an opposite direction. Faust's ejaculation resumes the history of Ireland, which was for centuries that of a country nominally under a single rule, really inhabited by two unblended and even hostile nations. Nevertheless, a great and beneficent change has long been in progress. The repeal of the worst penal laws carried out by an Irish Parliament—exclusively composed, be it observed, of Protestants—commenced a work of union which has gathered strength from every reform, legislative and administrative, since effected by the Parliament of Great Britain and Ireland and the Irish Executive Government. By general consent the names of Swift, Grattan, and O'Connell stand side by side as Irish patriots. Moral and social influences have tended in the same direction; some issuing from the great stream of European progress, others springing directly from English or Irish sources, but all operating gradually to break down or loosen barriers of race, religion, and language, and to lay the broad foundations of a society resting upon an historic groundwork of common misfortunes, common interests, and common aspirations. Without including such as might be deemed "more

Irish than the Irish themselves," it is certain that the number is large and increasing of those who, while respecting England and valuing the political and social ties which unite Ireland with her, feel that such respect and allegiance do not exclude, but rather enforce, the necessity for just and large concessions by the united Parliament to the legitimate, though to an English point of view, exceptional, wants of Ireland.

We have now entered upon a phase which imparts increased intensity to these national sympathies; and there is no question more fitted to evoke and strengthen them than that Land Question which affects the position and prospects of the entire agricultural population of Ireland. All intelligent men now acknowledge that in the physical sciences no such thing exists as a "dangerous fact." We need to learn the same truth in social science and rational politics. I am well convinced that the rising tide of Irish national sentiment (understood, I beg to say, in no narrow or unfriendly sense) is a fact, and that the only danger for England lies, not in acknowledging, but in ignoring it.

My aim throughout has been to produce the conviction that the principal difficulty in dealing with the Irish question, and especially the Irish Land question, lies in the prevalence among the English public of ideas which prevent their placing themselves at the true point of view for seeing and appreciating the essential facts of the problem. It is satisfactory to find that this conviction has been, and is, shared by most competent and disinterested observers. The late eminent Thomas Drummond, Under-Secretary for Ireland, observed many years ago,—"Ireland, though for years past a subject of anxious attention and discussion in public, is really very little known to the British people; and the disadvantage to both countries arising from that circumstance is much greater than is generally supposed."* After the lapse of a generation another Scotch gentleman confirms this view in the following remarkable language. Mr. George Campbell observes:—"Putting aside those engaged as partisans on the landlords' side, one finds [in Ireland] that on this subject [the land question] the doctor has just the same opinion as the priest or the

* From the "Irish Railway Report," quoted in Mr. M'Lennan's interesting and instructive Memoir of Thomas Drummond. p. 354.

minister, the tradesman as the farmer, the policeman as the carman, the town labourer as the agricultural labourer. The very landlords' agent, who has been giving you all the landlord side of the question, when you come to the subject of evictions, breaks away, and becomes an Irishman. Indeed most local agents, like Indian collectors, come to have at bottom much sympathy for the people with whom they are so continually in contact. The landlords themselves meet you not by asserting their right to do what they will with their own, but by saying that they never do evict without satisfying the tenant. In short, I find that whatever a man may be—landlord or no landlord—if he is only an Irishman, there is no difficulty in fairly discussing the question with him. It is not in him to scout the tenant's claim as utterly monstrous and unreasonable. That phase of the argument you only meet among Englishmen, who keep eternally repeating 'The rights of property,' 'The necessity of introducing British capital,' 'There is no reason why Ireland should be treated differently from England,' and can't be got much beyond these phrases."*

I may, however, say with truth, as I do with strong feelings of satisfaction, that even in the short interval since the words last quoted were penned, a considerable progress has been manifested in the public opinion of England. I have every hope that the Irish question will be more and more discussed in a fair and generous spirit by Englishmen, as lovers of truth and justice, convinced that the true and the just are only attainable by those who seek them through self-discipline at once intellectual and moral.

Serbando sempre al giudicare invitto
Dalle tiranne passioni il core.

HENRY DIX HUTTON.

10, Lower Mountjoy Street, Dublin,
13th January, 1870.

* "The Irish Land," by George Campbell, of Edenwood, Fife, Chief Commissioner of the Central Provinces of India. p. 102.

LETTER I.

THE CASE STATED—ENGLISH TRADITIONS—CUSTOMARY LAW.

"MORE within and less without," is one of Shakespeare's deep sayings, which applies not less to the intellectual than to the moral nature. Under the ægis of your great poet I take leave to express my intimate conviction that the chief difficulty of Ireland's problem lies in the slowness of the English mind to grasp Irish history, Irish principles, and Irish facts. Some, who will concede this, may consider that the last element should take precedence; but in my judgment the facts hold an intermediate position between the history and the principles, and, therefore, are best appreciated by the light of these. Sight generally presupposes insight; and I hope to prove that the most serious misrepresentations spring from narrow and anti-historic views; that the best antidote to prejudiced observation will be found in a large and generous philosophy combined with a sound knowledge of European and Irish history. The edifice of industrial feudalism, already tottering in Ireland, seeks support in the arid economic abstractions of a Senior, but finds none in the broad social conceptions of Adam Smith or John Stuart Mill; and a better introduction to the study of Ireland's actual condition does not, I believe, exist than the admirable essay by Professor Goldwin Smith, entitled "Irish History and Irish Character." From the concluding paragraph of this small but pregnant book, I shall quote a sentence which clearly expresses and justifies my own conviction above stated. Professor Smith observes: "By virtue of her long unsettlement and her special claims to consideration, Ireland is affording a clear field for the discussion of political, ecclesiastical, and social questions, which the English nation, *satisfied with an early and limited progress*, will not suffer to be mooted directly in respect to herself." The few words italicised present an enlightened Englishman's view of England's main

difficulty in regard to Ireland, and point to the best means of overcoming it. History and social principles are so closely connected that the attempt to draw an absolute line of separation is vain. The profounder our philosophy and the more European our historic conceptions the less difficult does it become to understand the Irish problem. Yet an Englishman who intelligently observes the deeper political tendencies of England in the nineteenth century, and who has fairly studied the more remote as well as recent history even of his own country, should find himself greatly helped towards a knowledge of the state and wants of Ireland. The points of historic and actual divergence between the sister countries are, indeed, numerous and important; yet they do not exclude points of agreement, or at least convergence, which, rightly understood, are peculiarly fitted to enlighten and direct English policy towards Ireland. I would, therefore, now invite attention to two of England's leading characteristics,—the one issuing from the depths of her past; the other, actively, though slowly, shaping her future.

If individuals are governed by habit, so no less are nations; for customs are simply social habits rendered more intense and venerable by being handed down from generation to generation. Every people, from the beginning of time, have had their customs and clung to them; but if there be one country which more than another has been governed by a customary *régime*—by a system not decreed or enacted, yet having all the force of law, and exerting an influence over society which mere written codes rarely possess—assuredly that country is England. Examine the sources and sanctions of English law, public and private, whether affecting the constitution of the land or the most ordinary dealing, you invariably find the presence, and experience the power, of custom, of judge-made law, of "freedom broadening slowly down from precedent to precedent." The extent to which customary law has moulded English history and social life—and nowhere more strikingly than in reference to landed property and agriculture—is concealed not only by familiarity, but by more special causes, and some prevalent misconceptions. A very large, probably the largest, part of our statutes, as well as of ordinary contracts, are, at bottom, customs reduced to writing, partly for the sake of clear-

ness and certainty, partly in order to introduce modifications necessary for adapting the ancient usages to modern life. The popular idea of customs is often exclusively associated with such as prevail over districts marked by public boundaries. But the English law upholds customs of a purely local character, even when extending simply over a private estate. For example, in course of time, a body of men, originally serfs, tilling the soil for the sole benefit of the owner of the manor, and at best holding portions at his will, gradually acquired the legal status of immovable and hereditary occupiers and virtual proprietors, subject only to certain dues and services. Some four centuries ago, English judges decided that the "will of the lord" meant his will as settled and controlled by a custom of his manor, tacitly sanctioned by his ancestors and himself, the breach of which made him liable as a trespasser to his tenant. These eminent lawyers, I venture to think, understood "the rights of property" and valued "freedom of contract," but they did not interpret these to mean a man's right to use his own property *and* to confiscate the property—in the shape of labour and capital—of another, a proceeding which, when applied to the modern relation of landlord and tenant, and decorated with a suitable garnish of false science, is deemed by some worthy of protection, if not of encouragement. The judges of the English common law, however, thought otherwise. The men thus enfranchised were copyholders, and their customary properties—the copyholds—have been estimated to include one-fifth of the entire acreage of England. Again, it is sometimes supposed that a prescription time out of mind is necessary to give a custom legal validity. But the law of England sanctions many usages of very recent date, particularly those of mercantile and agricultural origin. Two things are especially worthy of note in reference to such agricultural customs. Even when antiquated and practically inconvenient, no English landlord attempts to alter them without first acknowledging his tenant's legally acquired right, obtaining his consent, and giving full compensation. Again, the progress of scientific agriculture in modern times has introduced a variety of new customs, and these have gradually acquired the force of law, even where the landlord has merely stood by, allowing them to spring up between out-going and incoming

tenants without objection on his part. In fine, so strong is the leaning of the English law towards custom that, although a usage cannot be legal unless reasonable, the party refusing to be bound must prove its unreasonableness when the fact of its existence is established.

Now, bearing this in mind, let us suppose that in some newly-acquired part of England's dominions, say in India, the following state of things exists. In the entire northern region, and large portions of the residue, a custom is recognised which practically secures a fixity of tenure to the tillers of the soil, on whom their landlords have, with few exceptions, cast the burden of making permanent and other improvements, and who, accordingly, have done all that has been effected to reclaim bogs, drain, fence, build—in short, to create their farms, as distinguished from the bare soil. This custom empowers any outgoing tenant—who, though in form only a tenant from year to year, has himself bought his holding, or inherited from some one who has—to sell his interest, which consists partly in a goodwill acquired (as in the case of copyholds) by the acquiescence and tacit consent of successive generations of landlords, partly in permanent improvements created, purchased, or inherited by the occupiers. The landlord is aware of the transaction, which is commonly completed in his agent's office, and, in general, profits directly by it to pay himself all arrears of rent. Strong and trustworthy testimony is borne to the great preponderating advantages of this custom, its effects in stimulating industry, in lightening public burdens, and in preserving the public peace. England learns that some five-and-twenty years ago a gentleman of intelligence and position, for many years agent to one of the leading resident proprietors, and whose testimony is amply corroborated, publicly testified "that if systematic efforts were made amongst the proprietors to invade this custom of tenant-right, he did not believe that there was force at the disposal of the Horse Guards sufficient to keep the peace of the province." The same witness deposed to the beneficial effects of the custom, recommending immediate legislation and its extension to the entire of the country. Nevertheless, the custom has never been legalised, and some of the proprietors have endeavoured, with too great success, to undermine it in a variety of ways. Moreover, a law

for facilitating the sale of incumbered estates has been passed, and extensively acted upon, by which no provision was made for protecting the customary claims of the tenants, who were thus handed over to new proprietors, expressly freed from all obligations not specified in their conveyances, and indisposed to respect the custom. Under such circumstances confidence is shaken, and the farming population of the northern districts are filled with secret indignation, to which their economic and political dependence prevents them from giving an adequate expression. As regards the residue of the country, where this custom of tenant-right has not prevailed, improvements have notoriously been less, though the tenants have made them to an extent surprising in the absence of any legal security. Unprotected by law, or even social custom, and liable to eviction or increase of rent—too frequently realised—they resort to outrage, and protect themselves by reducing the landowning and governing class to the condition of "an aristocracy tempered by the blunderbuss." Suppose, now, that England, seeking to remedy these evils, proposed a measure shortly as follows: In the absence of any contract forbidding or regulating improvements, and only then, tenants might make certain kinds of improvements, and if evicted, or on the expiration of their tenancy, might claim compensation equivalent to the increased letting value caused by their labour and expenditure. The landlord, however, might free himself from such liability at any time by offering the tenant a lease for thirty-one years Surely the occupiers would reject, with good reason, such a proposal as being wholly insufficient and illusory. It permits, they might say, the landlord, by express contract, to exclude all claims even for future improvements, and indirectly encourages him to reject all claims arising out of past improvements effected by successive generations of tenants. Nay, more, such a law would practically place the tenants holding under the custom above described in a worse position than before, since the landlord could appeal to the new law as a moral justification for extinguishing the customary right of occupancy or hereditary tenant-right of sale, and for treating the most improving tenant as a mere stranger at the end of thirty-one years.

The case here put represents in the main the condition of the Irish occupier; the hypothetical measure is, in substance, the bill

actually proposed as a settlement of the Irish land question in the year 1866. It was framed by the Liberal Ministry which succeeded to office on the death of Lord Palmerston, whose noted saying, that "tenant-right was landlord-wrong," forbade all hope of even the most imperfect measure of reform under his long parliamentary reign. The Tenants' Compensation Bill of 1866 was, therefore, a clear indication of a desire to deal with the subject, and its provisions constituted at that time a real advance on the wholly abortive Tenants' Improvements Compensation Act of 1860. In justice to the then Government it should be added that their measure went the full length of the proposals made at that time by the popular party in Ireland, and embodied in a bill by Mr. J. B. Dillon and other Irish members, who doubtless considered that the existing condition of affairs, attitude of the British public, and then constitution of Parliament, rendered it inadvisable to press for a full measure of justice.* But persistence in such proposals as the above would now, I conceive, be wholly unstatesmanlike, for, since the introduction of the bill of 1866, the aspect of public affairs in Ireland has so completely altered, and public opinion, both in Ireland and England, has grown so surprisingly, that a corresponding progress in legislating upon the Irish land question becomes indispensable. The problem has risen into a sphere far above mere personal susceptibilities or party contests. It is, I believe, fast becoming a choice between revolution from above or revolution from below, between reform or revolt. All, therefore, who desire peace and prosperity for the two countries must earnestly wish that the great achievement of 1869 may be speedily followed up by another still more momentous, adding fresh cause for the gratitude and respect of the Irish people towards England, and a new claim for Mr. Gladstone and Mr. Bright to rank among the illustrious English statesmen who have fought and conquered—

In liberty's defence, their noble task.

Dublin, 25th September, 1869.

* This view is confirmed by the statements of the gentleman to whose consideration the bill of Mr. Dillon was referred by Government, as appears from his report which has recently been made public. He distinctly points out that the bill did not attempt to deal with two very difficult parts of the question—existing unsecured improvements of tenants and the tenant-right of Ulster.—*Two Reports for the Irish Government on the History of the Landlord and Tenant question in Ireland, with Suggestions for Legislation.* By W. Neilson Hancock, LL.D. pp. 55, 59, 64.

LETTER II.

ENGLISH TENDENCIES—FREE TRANSFER OF LAND, AND AGRICULTURAL PROPRIETARY.

IN the letter inserted in your journal of the 28th September, I invited consideration for two points which illustrate the coincidence of a just English policy towards Ireland with the most characteristic historical traditions and actual tendencies of England. Having already discussed the one which concerns the past, relating to the ancient existence and continuous efficacy of an English customary law identical, in principle, with Irish usages, rooted in fact, yet deprived of legal sanction, I next turn to the other, which regards both countries alike, with this difference only, that its immediate application is more feasible and more urgent for Ireland. I refer to the reforms, political and legal, needed to break down the edifice of feudalism, which, though modified and disguised by modern features partaking more or less of an industrial character, still finds a refuge and stronghold in the landed system and land laws of Great Britain and Ireland. The English movement in this direction, though only in its infancy, is clearly marked by Mr. Locke King's bill for the equal distribution among children of inheritances in land where the owner dies intestate; and by Lord Westbury's Land Registry Office; which will, I hope, ere long, be completed by a Landed Estates Court in England, as proposed by Lord Cairns. But English Radicals, I am disposed to think, have hardly realised the social necessity for measures destined not merely to remove artificial obstacles to the transfer of land, but to facilitate and encourage the conversion of occupancy into ownership. To some extent this process has made way in towns for the houses of working men. But I conceive that, apart from the political subserviency incident to tenancies at will, and even short leases, the great capitalist-farmers of England and Scotland cannot long continue to hold

their present subordinate position, and that both on economic and social grounds. Notwithstanding the new-born anxieties of some great proprietors and their sons, I believe that no class suffer more from the existing precarious tenure of farmers in these countries than that labouring class who directly depend on these as their employers. In proof of this I appeal to the long resistance of the English landed proprietors to the proposal, at last carried by Mr. Villiers, for checking depopulation and the destruction of cottages on large estates, by extending the basis of poor-law rating from the parish to the union. The same measure is as much needed in Ireland to arrest the clearances by which the poor-rates of many provincial towns are now unduly charged with the support of a labouring population, whose absence or distance no class feels more than the Irish farmers.

But the gradual conversion, within reasonable limits, of occupancy into ownership, as part of the transfer-of-land reforms, is a policy more immediately applicable and needed in Ireland. Two considerations in favour of this view have especial weight. The strongest economic reason urged for the sort of partnership which characterises the relation of landlord and tenant in England and Scotland—the one supplying the fixed, the other the floating capital requisite for scientific agriculture—has hardly any application to Ireland, where the farmer concentrates the claims of capital and labour in himself. Let it be granted that the large English farmer, feeling secure—so long as he votes with his landlord—in the owner's self-interest and honourable feeling, and protected in no small degree by legal customs, finds it more profitable to hire land and employ his capital in farming, at a profit of ten per cent, than to sink it in the purchase of property paying hardly three per cent. Yet the Irish tenant, not dealing on equal terms with his landlord, with a feeling of insecurity and wholly unprotected by customary law, might do better, even on mere economic grounds, to acquire the status of a farmer-proprietor. Again, the Incumbered, now the Landed Estates Court, has wrought, and is still working, great injustice towards the agricultural tenants, whose farms constitute a large proportion of the property—valued at nearly forty millions sterling, and estimated to embrace about one-fifth of the acreage of Ireland—which has been sold through

its agency. The evidence of Judge Longfield, whose experience in that court extended over nearly twenty years, is distinct and emphatic. He stated to a Select Committee of the House of Commons, in 1865, that the conduct of the new landlords had been "in many instances rather harsh to the tenants," whose rents were "frequently raised;" that with regard to the North of Ireland, where tenant-right prevails, his court acted with peculiar hardship upon the tenants, the existence of the tenant-right "being, in fact, a bonus to bad landlords, and enabling them to outbid those who would be good landlords;" and that legislation was needed to deprive the landowner selling in that court of "an unfair excess which the present law gives to the marketable value."

Considerations of this character must have enforced, if they did not suggest, the proposal which enjoys the popularity and weight attaching to the name of Mr. Bright with the Irish people. Like most large conceptions in their earlier growth, that of Mr. Bright was at first put forward in a shape which mature reflection led him to modify; but its essence remains unchanged. It may be correctly described as a plan which aims at the gradual formation of a farmer-proprietary in Ireland, by removing all artificial obstacles to the transfer of land in moderate portions; by facilitating and encouraging sales, either in the Landed Estates Court or directly from landowners to occupiers; and by making safe advances from the state to tenants in possession who can command the balance of the purchase money. The applicability and usefulness of this proposal may be considered in reference to the circumstances of Ireland, under two heads, one special, the other general. To the first belong an important class of large estates, which are not merely owned in mortmain, but are either at the disposal of the state, or held by absentees upon Irish trusts, or belong to trading corporations having their principal seat of business in London. Mr. Gladstone has already intimated the possibility of applying Mr. Bright's plan to the glebe lands, and a like assistance might justly be afforded to the occupying tenants holding under *toties-quoties* leases of church lands. The "Irish Society," which is virtually identical with the Corporation of London, has been declared by a judgment on appeal of the House

of Lords to be mere trustees of the City of Derry and adjacent land, vested in them by royal charters of James the First and Charles the Second for the benefit of that city and the county of Londonderry. The citizens of Derry are unquestionably much dissatisfied with the "Irish Society," charging them with misgovernment, and a course of illiberal dealing which has greatly checked the commercial and manufacturing development of that city. Similar complaints, more or less grave, are made against the eight London companies which retain the large estates granted to them in furtherance of the Articles of the Plantation of Ulster in the reign of James I., and forming, together with the estates originally granted by the other four companies, but since sold, and the portions retained by the Irish Society, the entire county of Londonderry. Although the legal decision above referred to does not directly affect the estates vested in the London companies, it admits of no doubt that their tenure was instituted on conditions which have been in many particulars violated, and for public purposes, which they tacitly acknowledge by spending a considerable portion of their income for the benefit of the properties and population committed to their charge. It may also be fairly questioned how far a mere trading corporation, like the Law Life Insurance Company, can, consistently with sound policy, hold, as owners in perpetuity, the vast tract of the county Galway, in which they were originally interested merely as mortgagees, more especially if the accusations publicly made in Parliament against their management be well founded.

But, however legitimate and useful may be the application of Mr. Bright's proposal to the above special cases, its chief significance attaches to it as a general measure for conferring a benefit on the occupiers consistently with justice to the present owners. The peculiar situation both of a large class of the landed proprietors and of the tenant-farmers, encourages the belief that a well-considered scheme for facilitating and aiding the transformation, by purchase, of occupiers into owners, would succeed to an extent quite sufficient to render it a valuable political element in a comprehensive measure of land reform for Ireland. This conclusion is fortified by a careful study of the great reform initiated for Prussia by Stein, completed by his successors, and subsequently

extended to nearly the whole of Germany.* But it seems equally clear that no such plan could supersede the necessity for immediate legislation, deeply, though wisely and justly, affecting the existing law of landlord and tenant. Mr. Bright's scheme would operate in too gradual and limited a way to effect, if taken by itself, the political settlement urgently required. His proposal excludes all compulsion, and could, therefore, only work slowly. The earlier sales of the Incumbered Estates Court cleared off the great mass of estates whose proprietors, owing to their insolvency, were, in effect, compelled to sell them. The value of agricultural land now passing through the Landed Estates Court, and which could be bought by the occupiers, does not exceed £300,000 or £400,000 per annum; and the quantity of land likely to be sold by contract between owners and occupiers, even if, as seems probable, considerable, would be too limited to solve, though it might materially diminish, the Irish difficulty. Besides, another limitation would result from one of the soundest features of Mr. Bright's plan. The condition that the state should only advance such an amount as could be safely secured, pre-supposes the command of money by the occupier. It has been stated, I believe correctly, that about twenty millions are deposited in the Irish joint-stock banks, and that "the farmers are understood to be the most numerous class of depositors."† But information derived from a leading bank in the north of Ireland leads me to believe that these depositors, generally speaking, belong to the better class of farmers, and do not, as a rule, embrace the 300,000 tenants whose holdings are under fifteen English acres, or the nearly half a million of occupiers whose farms are valued at less than £20 per annum. In short, a scheme for aiding purchases, though most reliable as an auxiliary measure, would

* In confirmation of this view I beg to refer to a pamphlet, entitled "Proposals for the Gradual Creation of a Farmer-Proprietary in Ireland," which represents the convictions of nine gentlemen, who, with myself, composed it. Though not at liberty to mention their names, I can state that their social and intellectual standing is such as to command respect for their views. The Prussian land reforms have been explained by me in a pamphlet, entitled "Prussia and Ireland," which, with the former publication, can be obtained from Mr. Falconer, 53, Upper Sackville-street, or Messrs. Hodges, Foster, and Co., 103, Grafton-street, Dublin. Ample materials for studying the Prussian legislation and its results will be found in the valuable work by Dr. Meitzen, now publishing under the direction of the Prussian government, of which the first volume has appeared. (Der Boden etc des Preussichen Staates. Messrs. Williams and Norgate, Henrietta-street, Covent Garden, London.)

† Report on the Supposed Progressive Decline of Irish Prosperity. By W. Neilson Hancock. 1863. p. 50.

not meet the wants of that large class who most need protection, and whose discontent, nay, more, disaffection, makes the land reform an urgent political necessity. This view is corroborated by the history of the Prussian reform. It did not, as often supposed, exclusively consist in the immediate creation of a farmer-proprietary. No doubt such a class was to a considerable extent created at the outset; but the relation of landlord and tenant was largely left subsisting, and only reformed in its feudal and oppressive incidents. The rent banks were not instituted until 1850, and their working was greatly facilitated by the cotemporaneous law which empowered the occupiers, whose tenures had been made perpetual by the previous reforms subject to ascertained rents, to buy these rents at a specified and low rate of purchase. All these considerations lead to the conclusion that a thorough reform of the law of landlord and tenant is the most pressing need for Ireland. I venture to add my conviction that such a reform, by checking an "unfair excess of the marketable value" on sales, and by restraining, to use Lord Clarendon's energetic language, other "felonious" acts of greedy landowners, must greatly facilitate the working of the plan which bears the honoured name of Mr. Bright.

Dublin, October 8, 1869.

LETTER III.

POSITION OF THE IRISH LAND PROBLEM—ITS POLITICAL CHARACTER.

I HAVE given the first place to those points of the English landed system which offer a real and strong support to the reformer of Irish land tenure. He—especially if an Irishman—ought to bear in mind the difficulty, nay impossibility, of devising any plan of reform which shall prove at once immediate and radical. A long-continued and deeply-seated social malady calls, indeed, for special and energetic remedies; but surely these ought to be, as far as possible, based on normal principles, and associated with measures general in their nature and gradual in their operation. Even just and salutary legislation will be stigmatised as revolutionary by men who make the law a partner with their own social crimes. The Prussian feudalists resisted the reforms of Stein, though largely based on legal principles, theoretically incontestible, however often violated in practice. Yet moderation is counselled not only by the necessity for convincing the British public, but by the unavoidable drawbacks attendant on every resolution which unduly exalts present necessities at the expense of general harmony and future well-being.

For example: Suppose our choice lay simply between the present precarious and degrading condition of Irish tenants-at-will and their wholesale conversion into proprietors, or quasi-proprietors, subject to a rent, either fixed or varying only with agricultural prices. The latter alternative might be accepted, and yet a solution, if attainable, might be deemed more feasible, and even preferable, which should secure the farmer against arbitrary eviction or inequitable rise in rent, while respecting proprietary rights and leaving to landlords the prospect of personal benefit from extensive estate improvements made by them, and such as they alone could make. The latter hypothesis is encouraged by a careful

study of English customary and equitable law, combined with the Ulster tenant-right* and some other features of the Irish land system. Its adoption would leave room for deeper and slower reforms, common to Great Britain and Ireland, destined to transform the present semi-feudalism of our landed system into a genuinely industrial *régime*. On the other hand, the disposition thus indicated would, I conceive, furnish an additional claim on Englishmen to make large allowances for the characteristic and, as they would deem them, exceptional features of the Irish land problem.

The preparation afforded by the passing of the Irish Church Act for dealing with the land question, as regards the attitude of parties, has been previously noticed; but another important bearing of that measure deserves consideration. The most obvious and simplest portion of the Irish problem was successfully treated by following a method equally indispensable for its second and

* The Ulster tenant-right is an Irish fact of fundamental importance, and as such has been recently, on two occasions, placed prominently before the public at Manchester in a way which requires notice. Its significance may be either understated or overstated. Your respected representative, Sir Thomas Bazley, whilst justly distinguishing the Ulster custom from "fixity of tenure," has not, I consider, given sufficient weight to its twofold character, as embracing not simply improvements, but what may be variously called goodwill, continuous occupation, or compensation for disturbance of possession. This latter element has a high practical value. It sanctions the (I would almost term it) co-proprietary claim of the Irish tenant, analagous and in its origin very similar to that of the English copyholder, comprehending not alone permanent improvements in the modern sense, but the co-operation of successive generations of tenants in converting waste into cultivated land, and, in short, creating the farm. On the other hand, I perceive that Sir John Gray, as reported in your journal of the 19th instant, identifies Ulster tenant-right with fixity of tenure. "The Ulster tenant-farmer," he observes, "has occupancy right so long as he pays his rent and fair increment of rent due to the fair increase of prices, and not due to his rendering the capacity of the farm greater for production and improvements which were the result of his own labour." I must dissent from this statement of the honourable member for Kilkenny, which is at variance with the testimony of the most competent witnesses familar with the north of Ireland, and most favourable to the custom. The Ulster tenant-right, even when maintained to the fullest extent, and unabridged by recent innovations, permits the landlord to resume possession, provided he buys the tenant's interest in the farm. Neither does the land-owner violate the custom when he raises the rent in consequence of improvements made by himself on the estate, or general improvements, provided in so doing he does not encroach upon the tenant's interest as above defined. Ulster tenant-right is, therefore, clearly distinguishable from fixity of tenure, and the distinction is practically important in reference to legislation on this difficult question. Legislation on the basis of the Ulster custom would not involve any transfer of property from the landlord to the tenant, or render the landlord a mere rent-charger, powerless to check subdivision or subletting; while such a measure would practically secure the mass of the Irish tenantry from eviction, or an inequitable rise of rent, and besides encourage both owner and occupier to make improvements—the one over his estate, the other on his farm. I offer these remarks in the interest, as I believe, of truth and a practical settlement. At the same time I gladly join in the testimony borne to the ability and value of the speeches delivered by Sir Thomas Bazley and Sir John Gray on the Irish land question at Manchester.

more difficult phase. Mr. Gladstone adopted a course eminently complete, historic, and sympathetic. The measure, while satisfying the political claims which the majority justly urged to future equality before the law, made large concessions to the situation of the minority, as based on a possession long recognised and sanctioned by the state. It also marked an era in English policy towards Ireland, by a generous spirit of justice to the mass of the Irish people. Catholic emancipation was wrung from a Tory ministry under the ancient parliamentary *régime*. Religious equality was proposed by a Liberal government, and carried by a twice reformed Parliament. The argument which mainly decided the question resulted from the simple fact that the Established Church was a badge of conquest, and so regarded by the majority in Ireland. This argument was plainly drawn from Irish history, and went back at least three centuries. Moreover, the two chief propositions antagonistic to the bill stood condemned by their anti-historic character. One set of opponents contended that the English system should be upheld in Ireland, only modifying the most glaring anomalies within the Church; yet such changes would have left untouched the standing anomaly of centuries. The second set, while conceding the necessity for an alteration of system and exceptional treatment, put forward a new ideal of a State Church, overlooking the incompatibility of concurrent endowment with the social situation and attitude of parties engendered by Irish history. The mistaken attitude of these two classes, coupled with its anti-historic source, correspond closely to that foreshadowed by the land problem. Some opponents of a reformed tenure contend for a purely English system, one based, as alleged, on "freedom of contract," and admit no necessity for protecting the weaker side. Others concede this necessity, but would limit protection to mere enactments for securing to the tenant compensation for his future improvements. Both classes, however, agree in the fatal oversight of ignoring the past, and neglecting to appreciate the distinguishing historic features of Irish society, and especially of the relation of landlord and tenant in Ireland.

The voice of history condemning the English ecclesiastical establishment in Ireland was not generally heeded until events

gave it force as the exponent of an urgent political problem. The delay was, on the whole, fortunate, for there are social problems, usually those of the deepest sort, which evade any insufficient treatment, and must wait until the time is ripe for their thorough handling. So stands it with the Irish land question. The prime condition for treating it successfully lies, I conceive, in the recognition of its essentially political character. General principles of social economy, of course, should not be disregarded; but a clear conception of economic laws, abstracted from their peculiar manifestation and shape as part of the English land tenure, will be greatly assisted by having a firm grasp of the higher aspects, social and moral, of the Irish problem. Its essentially political character results from a variety of considerations. Fenianism, as an independent movement, numbers its chief adherents among a city population caring, and probably knowing, little about the land question, except as a source and pledge of popular disaffection. But all competent and impartial observers confirm the public testimony of a Liberal Lord-Lieutenant (the Earl of Kimberley) and Tory Chief-Secretary for Ireland (the Earl of Mayo), and discern the chief danger of the Fenian conspiracy in the secret sympathies of the farming population, who had learnt to despair of constitutional remedies for their real grievances. The present lull of revolutionary agitation is not mainly due to prosecutions and convictions, but to the belief that England now both desires and is able to do what is right. As an eminent thinker* has observed—"Man is thus constituted: it is the denial of justice which irritates him, and the impossibility of obtaining it which causes him to despair. From the moment that he feels assured of being listened to by a legitimate tribunal, he becomes calm." The agrarian outrages no less impart a political character to the Irish land question, since they involve the first elements of social order, security for life and property. A barrister of high professional standing, and for many years chairman of quarter sessions, once expressed to me his belief that such violations of the law, among a population otherwise remarkably free from atrocious crime, originated in acts of oppression or gross mismanagement by landowners or their agents. Another member of the Irish bar, well qualified

* Joseph de Maistre.

to form a judgment, very recently observed in my presence, that in his opinion the most dangerous sign of the times was a growing disposition among educated men to adopt the view just stated.

The land question is also political because it affects, with rare exceptions, the entire farming population of Ireland, and inspires them, despite of other barriers, with a common sentiment. Suppose, for example, that the Ulster tenant-right were legalised for that province, the concession would be regarded as a victory gained for the whole country, since the agricultural situation and relation of landlord and tenant throughout Ireland practically differs only in degree of intensity, not in kind. Again, the progress of material prosperity, the improvement in clothing, and even food, combined with the spread of education in the rising generation of farmers' sons, have, notwithstanding the attractions of higher wages in foreign lands, and facilities for emigration, fostered the popular craving for an unviolated home, as the centre and guarantee of the Irish peasant's deepest and holiest attachment to his family, his country, and his faith. The land question, therefore, urgently demands not mere makeshifts, but a large and generous policy; and the surest road to this lies, I believe, in a deep study of the history of Ireland.

Dublin, 22nd October, 1869.

LETTER IV.

CONTRASTS OF ENGLISH AND IRISH HISTORY—NATIONAL SENTIMENT.

THE light which Irish history throws on Irish principles and Irish facts may be shown in various ways. Probably none is so effectual as that of taking the historical development of England for a basis of comparison, and, as it will be found, of contrast. The most fundamental feature belongs alike to the early and later periods; that powerful sentiment of independent, even isolated, nationality, fostered by attachment to traditional institutions, which not unfrequently exalts them above a relative standard of value, and makes them absolute models for universal imitation. Yet the rapid expansion of England's empire within one century has furnished proof after proof, from the revolt of her American colonies to the East and West Indian insurrections of our own day, that such an exaggeration when erected into a guiding principle of external government becomes a source of real danger and mischief.

Resort is, however, unnecessary to remote or foreign examples, when we can learn wisdom by contrasting the attitude of England towards the two sister kingdoms, Scotland and Ireland. Her relations with each had two points in common—the union of crowns, and the union of parliaments; but this similitude intensifies the contrast in all else. The accession of a Scottish king to the throne of England joined two nations whom previous intercourse and common civilisation had largely assimilated, yet who were obliged to respect each other's strength. The same king, as monarch of Ireland, found that a nominal rule of four centuries had merely engendered anarchy, necessitating re-conquest under conditions which rendered assimilation of the vanquished with the victors a moral impossibility. Scotland, in spite of her own shortcomings during the popular struggle with the crown, and her

consequent oppression under the Restoration, maintained her national religion and political independence during the century that preceded her parliamentary union with England. She was able to enforce fair political terms which, combined with later measures of economic and legal reform, have sufficed to secure tranquility, and a general sense of contentment with British rule.

Conciliation and freedom have thus been the mainsprings of the attitude of England towards Scotland. Unhappily, English policy in Ireland was widely different, and for the last three centuries this might be resumed in two contrasted ideas—repression and ascendency. The sixteenth century, intellectually and politically so glorious for England, initiated her new Irish policy. The previous failure of English rule in Ireland sprang from two causes—first, the existence beyond its limited real sovereignty—called the Pale—of an independent society—"The Irish Enemy," it was officially styled—united by fear and aversion to a foreign colony which represented nothing but the evils and anarchy due to a permanent invasion that had never ripened into conquest or produced real amalgamation; secondly, the tendency of the scattered English settlers to assimilate with the native population, all the measures theretofore tried to prevent such assimilation having proved efficacious.* Accordingly the new English policy instituted a real and systematic government, expressly directed to remove the above two difficulties. It substituted for open disorder an ostensible order which, in truth, was social anarchy, thinly disguised as law, and found its chief support, not so much in military force, as in legal chicane and legalised fraud. This system, elaborated during centuries, though modified in some of its worst features, continued down to the generation which witnessed the struggles for Catholic Emancipation. Its spirit pervaded the entire framework of Irish society, and its results can as little be remedied by the repeal of unjust laws as a severe chronic disease can be cured by merely treating its symptoms, or even prescribing air, diet, and exercise. The majority of the English people and a liberal government are justly and nobly endeavouring in the 19th century to undo the work of England in the 16th, 17th, and 18th

* Mr. A. G. Richey's "Lectures on Early Irish History" present in an interesting shape an accurate philosophical view of the period down to the year 1534.

centuries, the establishment of a church of conquest, the erection, to use the words of the judicious Hallam, of an "unconquerable oligarchy," and the discouragement of Irish manufactures (save one), and even agriculture. The penal laws, the wholesale confiscation—thrice repeated in one century, and reversing the interest of Catholic and Protestant, of Irish or Anglo-Irish and English in the soil, the laws forbidding or restricting trade, all had a manifest aim to repress the energies of the mass of the people. But their worst aspect was the creation of an ascendency-government, of a narrow oligarchy, fitly called "the Anglo-Irish garrison;" supreme in Ireland, and powerful in the British parliament and executive. Nothing so clearly distinguishes the later system from the earlier no-government than the measures taken to create and maintain a dominant class placed by their interests and prejudices beyond all risk of assimilation or sympathy with the mass of the Irish people. To this source are traceable those violations in Ireland of the English laws against the holding of land by foreigners and in mortmain, involved in the enormous grants of confiscated land—chicane being the grand engine of confiscation—to English and Scotch non-resident adventurers and absentee corporations.

It would be needless, as it is painful, to recall such transactions if they had not produced results which enter deeply into the present situation. The same is the case as regards the Penal Laws. More recent than the confiscations, and long since qualified in their worst features, they formed, like these, not merely an engine of repression but a mainstay of ascendency government. This complete severance of the upper and ruling from the lower and governed classes; this establishment and endowment of an aristocracy alien in religion, race, and sympathies from the majority of the people, though modified by a series of legislative and administrative reforms, still sheds its baneful influence and calls for constructive measures to secure peace and progress for Ireland. The spirit of class ascendency, reviving, after a brief period of enthusiasm and generous union developed by the movement of 1782, deprived it of a truly national character, and opened the door for those acts of oppression secretly fostered, and of corruption hardly disguised which paved the way for the Union. Doubtless in Scotland, as in

Ireland, corruption was employed to effect the fusion of the local with the Imperial Parliament; but the resemblance stops there. The terms imposed by the dominant nation reveal the presence in Ireland of a faction, intent only on maintaining its own interests and unjust privileges, and willing to sacrifice every national aspiration to the cause of ascendency. That oligarchy, unlike the Scotch aristocracy, procured or acquiesced in conditions of union which have been slowly abrogated, one after the other, by two generations of legislators. Exclusion of the majority from Parliament, monopoly of political and judicial offices, even of trade, establishment of the church of the minority—all were sanctioned by the Act of Union, and all have vanished from the British statute book and social life of Ireland. Yet the ancient spirit of class ascendency, expelled from its vantage ground of civil and religious inequality, is still master of two formidable strongholds—the English land laws and the courts of justice. By these the policy of repression and ascendency still maintains its ground, and will do so until English public opinion attains the conviction that the selfish allegiance of a mere garrison would be well exchanged for the gratitude and respect of an entire people.

The contrasts of English policy in Scotland and in Ireland, suggest some practical considerations. England now begins to see the pressing urgency of a thorough reform in the land tenure of Ireland, and Englishmen seeking a remedy for evils admitted, but, as yet, imperfectly comprehended, not unnaturally turn to the well-known Scotch system of giving at least partial security to the tenant by a lease. Is this a safe model to follow, or one specially suitable to Ireland? About the middle of the 18th century, Scotland, strong in her happier social antecedents, and strengthened by her union with England, asked for and obtained measures which encouraged the execution of extensive permanent improvements by landowners, and the granting of leases, practically limited to nineteen years, to capitalist farmers. Under this system agriculture has made immense progress. Yet modern experience discloses fundamental defects in it, as regards both tenants and labourers. It is well known that the farmers are deeply dissatisfied with the operation of the game laws, and the law of hypothec, or distress. In reference to the tenure, Mr. Read, M.P. for East

Norfolk, himself a tenant farmer, has recently observed: "In Scotland they have leases for nineteen years, and I am sure a Scotch tenant, as a rule, expends ten times more in the improvement of the land than an Irish tenant. Then you see what happens at the end of the lease. If you take up any newspaper, you will see that the Duke of Argyll, for instance, has a whole list of farms to be let by tender, and the out-going tenant is no more regarded than you or I would be. Thank God that is not extended to Norfolk, and I hope it never will be." I apprehend Mr. Read does not mean that the tenancy at will, almost universal in England, and legally so precarious, is, in itself, a desirable tenure, but merely that continuous occupancy, at a fair rent, as established by the customary social relations of England, and largely fortified by her legal agricultural customs, is, on the whole, preferable to a short term of years, at a competitive rent which contains no provision and implies no understanding for renewal; the tenant being thus exposed to the temptation of neglecting and working out the land during the last years of his lease, or to the danger of seeing a stranger preferred even where no ground of complaint has existed. The prevalence of the bothy and farm kitchen, corresponding to the English "agricultural gang," and other evils incident to the condition of agricultural labourers in Scotland, tends to prove that the system of short leases and competitive rents is incompatible with settled homes, and the physical and moral well-being of the rural population. But, even apart from these special considerations, the vast difference between the historic antecedents of Scotland and Ireland, above referred to, should surely inspire great mistrust of any scheme purely based on Scotch experience as a remedy for the Irish difficulty. In Scotland the agricultural renovation began a century ago, under circumstances eminently favourable for inaugurating a system of co-operation between landlord and tenant. Extensive consolidations were gradually effected at a time when, though no doubt occasioning much suffering, they were politically possible. In Scotland social convulsions had not, as in Ireland, sundered the upper from the middle and lower classes, and left bitter recollections of religious persecution and civil oppression. The natural facilities thus existing for an extensive agricultural revolution

were augmented by the rapid growth of manufactures, diffusing a spirit of enterprise among all classes, enabling the land-owners to make a large permanent outlay, and creating a class of capitalist farmers. The more the Scotch agricultural system is examined the more will it appear, in essential features, a modified edition of the English system; each differing from the other less than is often supposed, but both profoundly distinguished from the Irish system in historical antecedents and practical characteristics.

Dublin, November 6, 1869.

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LETTER V.

CONTRASTS OF ENGLISH AND IRISH HISTORY—RELIGIOUS ORGANISATION.

IT is not to be wondered at that Mr. Gladstone's recent allusion to Ireland, at the Mansion House, should seem "lugubrious" to those sections of the English press which, either as apt pupils of the "Anglo-Irish garrison," or from ignorance of the real situation, desire to make things "look pleasant." I perceive, however, with satisfaction, that you, in common with the enlightened and sympathetic journalism of England, apprehend the weighty language of the Prime Minister in the way that thoughtful and well-disposed Irishmen have understood it, as importing a deep sense of the difficulty, and a proportionate resolution not to fall beneath the occasion, either in statesmanlike resource or personal devotedness. Englishmen who thus identify the honour of England with her love of truth and justice—and I trust their number is large and increasing—will not shrink from a retrospect, though painful, which may assist in shaping a brighter future. I shall, therefore, offer no apology for continuing to ask attention to the principal contrasts between English and Irish history. On the last occasion reference was made to the perennial attachment of the English people to their historical institutions, and to the opposite results of a policy which in Scotland respected the like sentiment, but outraged it in Ireland. The modern history of England, or that of the three last centuries, points to as many distinct movements, ecclesiastical in the 16th, political in the 17th, and industrial in the 18th. Each of these, while identified with the growth and power of the English nation, reacted profoundly, and, for the most part, injuriously, on the development of the people of Ireland, deeply influencing their present condition, and specially affecting that of the agricultural classes.

To say that the Reformation made England mainly a Protestant nation, and left the Irish what it found them—an essentially Catholic

people, would very imperfectly convey the comparative effects of that revolution in the two countries. The predominating social contrast lay, not in the doctrine, nor even in the constitution, of the two churches, but in their relative attitude towards the State. Historical analogies, ancient and modern, confirm this view. The Catholic population of the Rhine provinces, and even of the Polish territory of Prussia, with their large infusion of farmer proprietors, are as well affected towards their Protestant King as the agricultural proprietary of France to their Catholic ruler. The Anglican and Presbyterian tenants-at-will of Ulster, whose allegiance to the English crown was long secured by an exceptionally good position, and even purchased by unjust privileges, are now awaking to a sense of their precarious lot, and show symptoms of discontent, too well justified by the gradual annihilation of their cherished land customs, and capable of converting loyalty into open disaffection. The history of Protestantism in England itself teaches the danger to national union and well-being of an *imperium in imperio*, of a State which rests on a privileged class, and leaves outside the multitude. But the disabilities of English Dissenters, though grievous and long-continued, offer a very imperfect image of the policy of repression and ascendency in Ireland.

The religious element of dissension introduced among the Irish people by the Reformation preponderated over differences of race and origin to an extent not generally known or adequately appreciated. The systematic efforts of England in the sixteenth and following centuries to reorganise her power throughout Ireland rested on a population essentially English and Scotch; being either descendants of the earlier settlers in the few eastern counties afterwards called the Pale, or colonists placed on the confiscated lands by James the First, Cromwell, and William the Third. But the aboriginal or Celtic population, especially its upper ranks or tribal chiefs, had, during the four preceding centuries, become largely intermixed with the descendants of the Anglo-Norman invaders scattered through the country, and who, for two centuries, had been practically independent of all authority. These mingled or allied families were forced by the course of events into a common religious and political bond, and suffered alike the consequences of defeat and subjection to the modern claimants of property and

power. Owing to the extraordinary social convulsions and changes of fortune caused by the complicated revolutions of the seventeenth century in Ireland, we find that portions even of the later English colonisations became amalgamated with the earlier and popular elements of the Irish people. In accordance with these facts, counties which present the most marked features of agrarian crime, as, for example, Westmeath and Tipperary, are largely inhabited by descendants of Anglo-Norman, Cromwellian, and other adventurers. Irish nationality, therefore, cannot be tested by mere considerations of race, or even of religion, but rather results from an aggregate of traditions and a common situation which have for centuries tended to place the occupiers of the soil, or masses, in permanent antagonism to the landowners, as the depositories of power and upholders of ascendency-government under the ægis of England. The corrupting influence of this system is strongly shown by its tendency to check the natural effects of common religious sympathies between landlord and tenant. There is too much reason to believe that even the old class of Roman Catholic proprietors are, with some honourable exceptions, disposed to adopt the same attitude towards the occupiers as their Protestant fellow-landowners. It is well known that a considerable proportion of the properties sold during the last twenty years in moderate sized lots have been purchased by Roman Catholic shopkeepers and merchants, who, though often able and willing to execute permanent improvements, are not unfrequently hard landlords, and look upon their purchases as simple investments. The Incumbered and Landed Estates Courts, therefore, notwithstanding the benefits wrought by them in other respects, have, in truth, done nothing to diminish, and in some ways have even augmented, antagonism between occupiers and owners. As already observed, the religious element alone does not, any more than that of race, determine this attitude of those who pay towards those who receive rent. But it cannot be doubted that the prevalence of Catholicism among the masses, whether of Celtic, Norman, or even English origin, who till the soil, as contrasted with the predominance of Anglican Protestantism among the few thousand owners of Ireland, greatly enhances the powerful sentiment, totally distinct from a sense of material interest, which is enlisted by any scheme for creating a farmer proprietary, whether compulsorily according

to Mr. Mill's proposal, or by voluntary machinery as advocated by Mr. Bright.

The influence of Catholicism on Irish history, and especially upon the land question, during the last three centuries, can be rightly estimated only when the religion is considered, not simply in itself, but as affording an example, unique in modern times, of a spiritual organisation standing apart from wealth and temporal authority. The Catholic Church of Ireland has been since the Reformation, and continues to this day, a great political power, eminently popular, and, in the main, beneficial, precisely because she stood outside the State. An attitude originally compelled by adverse circumstances became, in time, so natural and unalterable that centuries of misgovernment and grievous persecution have, at last, borne noble and consoling fruit in a pacific revolution of imperial, and, in truth, European significance—the complete separation of Church and State. The same peculiarity in the position of the priesthood, rendered them the chief agents in keeping alive two great movements, of which one is the order of the day, and the other is rapidly gaining ground—the land question and Irish nationality. Every observer of passing events must be struck with the prominence of the clerical influence at tenant-right meetings. It is not too much to say that the Irish priests, more than any other class, have, by their constant appeals to a religious and patriotic sense of duty, fostered public spirit among their flocks, and prevented all sense of independence from being crushed among the farmers. The memorable Clare election which preceded Catholic Emancipation presented a striking example of this influence, in the person of the humble but heroic peasant woman whose exhortation to her husband, when brought from prison to the poll, with a promise of release if he voted for the landlord's candidate was, "Remember your soul and liberty." It is often asserted that the Catholic clergy are mainly influenced by interested motives in checking depopulation. But the *esprit de corps* of every profession is averse to the diminution of clients, and I have recognised the same disposition among Protestant rectors in Ireland, who, with assured incomes, deplored the forced expatriation of their flocks. It can hardly surprise that some prominent clerical advocates of the Irish farmers' claims should be

extreme in view and violent in language. But the patrons of *statu quo* always make the most of such aberrations, while the far more numerous proofs of moderation are kept in the background. Yet to these gentlemen we owe many of the most valuable and best authenticated illustrations of the evils produced by the land laws and the courts of justice in Ireland. Among a multitude of such contributions, which have silently helped to create public opinion, first in Ireland and later in England, I shall mention three of recent date and singular importance. The suit in Chancery of a parish priest* placed in the clearest light the extent to which a yearly tenure may become a snare for an improving tenant. The Irish Master of the Rolls, in his judgment, though sitting in a court of equity, was obliged by the English law to refuse relief to the evicted tenant, and declared that in so doing he was forced to "administer injustice"—a view which was reiterated by the Court of Appeal. The system of management and arbitrary estate rules too frequent in Ireland were put prominently before the public this year, in an action for alleged libel contained in the letters of a parish priest, brought by the chairman of a land company against the editor of the journal which published them.† Readers of Mr. Mill's "England and Ireland" will recall a striking illustration of the eviction and harsh treatment of improving tenants, taken from the pamphlet of a Roman Catholic clergyman.‡ The last case strongly proves the value of such contributions, containing facts investigated on the spot, especially when brought before the tribunal of English public opinion. The Marquis of Conyngham, however careless of Irish criticism, felt obliged to put forward an ostensible reply to Mr. Mill, the real value of which has been justly appreciated in the rejoinder contained in the second and later editions of that gentleman's essay.

The Roman Catholic clergy of Ireland are, therefore, justly entitled to respect and gratitude as organs of public opinion, more

* O'Fay *v.* Burke. See Dr. Hancock's two reports for the Irish Government on the history of the landlord and tenant question in Ireland, 1869, pp. 25-28.

† M'Cullagh *v.* Knox: reported in the *Irish Times*, 18th, 19th, 21st, and 22nd of June, 1869.

‡ Tenant-Wrong Illustrated in a Nutshell; or, a History of Kilkee in Relation to Landlordism during the last Seven Years. By the Rev. Sylvester Malone. 1867.

especially on the land question. In some respects it might be wished that their influence was even stronger than it is. The great diminution of their spiritual authority over large sections of the Irish population of Great Britain and Ireland, is certainly due to their honourable preference for open and constitutional action. It is also to be feared that the general indisposition of Roman Catholic landowners to co-operate with their clergy as manifested in various ways, is chiefly due, not to greater enlightenment, but to an insufficient sympathy with the tenant farmers. The time has, indeed, arrived when the aspirations and interests of the Irish people, composed of elements so various and hitherto so conflicting, yet manifestly destined to form a political unity, should find expression in organs more enlarged than any existing church can furnish, and assert their vitality as branches of the great tree of modern European science and life. But such maturity of thought and action will be most surely proved and advanced by an impartial, comprehensive, and kindly estimate of Ireland's past, and this cannot fail to render a just tribute to the moral devotedness and eminent political services of Irish Catholicism.

Dublin, 20th November, 1869.

LETTER VI.

CONTRASTS OF ENGLISH AND IRISH HISTORY—POLITICAL INSTITUTIONS—ASCENDENCY-GOVERNMENT.

DIVISIONS within and ignorance without render it almost equally difficult for Irishmen and Englishmen to view each portion of the Irish problem in its real connection with the entire. This difficulty, so serious, and, unless surmounted, so fatal to practical insight, presents itself in the most various shapes. For example, an obstructive policy has ever sought to confound discontent, and even disaffection, naturally resulting from protracted misgovernment with the irreconcilable hostility of an exalted minority. Accordingly "Fenianism" is now used by the Irish Tories to embrace everything obnoxious, from agrarian outrages to manifestations of national sympathies. Now, to confound all the symptoms of social disorder under a common anathema can only encourage panic and further the aims of those real anarchists, the men of wealth and station, who would fain preserve everything and improve nothing.* Yet comparatively few, I trust, will espouse repression as a substitute for complete and far-seeing justice. Let us rather use the present critical juncture as a stimulus to search more deeply into the real, long-continued, less-understood grounds

* The speech of the French Emperor, alluding to his difficulties, comes opportunely to rebuke alarmists and discourage extraordinary measures of repression in Ireland. After all is it not better to see Fenians going to the poll than conspiring in secret? I believe that even in Tipperary, exceptional as it is together with a few other counties, a moderate degree of foresight and organisation would have defeated their electoral efforts. The imposing and orderly assembly of the tenant-farmers and inhabitants of the King's County—numbering from 25,000 to 30,000 persons—held last Sunday, near Tullaghmore, would, as a very trustworthy eye-witness informed me, have been thrown into confusion and marred, like other tenant-right meetings, by a mere handful of ill-disposed and disloyal men, had not the probability of the attempt been anticipated and measures taken to prevent disturbances, which were carried into good effect by the cordial aid of the people themselves. The moderation of the language held by the three priests who spoke to resolutions, and by the chairman, also a priest, and their expressions of grateful confidence in Mr. Gladstone, are worthy of note; but will certainly not be noticed by the Tory press and panic-mongers, who give prominence to any violent clerical speech, and pass by the far more numerous manifestations of good sense and right feeling by the Roman Catholic clergy at such meetings.

of the failure of British rule in Ireland. The issue of a conflict on Irish ground could hardly be doubtful; but how would it consort with England's honour and her position as a European power to hold in forced subjection another Venetia? Now, unfortunately, the views of Irish Toryism are but too well assisted by the state of English public opinion, which, even where liberal and anxious to do right, is only beginning to appreciate the social facts of Ireland. I may cite, as a proof of this, the admission of so able an observer as Mr. Samuelson, M.P., in his recent and valuable letter to the *Daily News*, that, though not unfamiliar with the history of the Irish land question, he considered the acknowledged increase of material prosperity, coupled with the fruits of religious equality, would render unnecessary any measure but one for securing compensation to tenants for their improvements; an illusion dispelled by his visit to Ireland. The influence so generally attributed to religious differences in producing the evils of the land system is greatly exaggerated, as readers of the late Sir G. C. Lewis's essay on "Irish Disturbances" may know. Religious ascendency has been part, but only part, of the baneful ascendency-government. To this system, its origin and results, with special reference to the land question, I shall briefly call attention, while pursuing the contrasts between English and Irish history which date from the great political movements of the seventeenth century.

The settlement of 1688, which placed William the Third upon the throne, as regards England established the effective governing power in an ancient aristocracy which had struck root in the national life and maintained, not without dignity and usefulness, an almost undivided rule during nearly a century and a-half. Despite of grave defects and the selfishness inherent in class government, the English landed proprietors upheld their social supremacy by the possession of eminent qualities, by a large accession of professional and industrial talent, and by timely concessions to a semi-popular element concentrated in the middle class. The great movement led by Cromwell and Milton, though premature and seemingly abortive, left deep traces which modified the spirit of aristocratic exclusiveness. Avarice and pride, faults characteristic of an aristocracy, were tempered by nobler qualities, and made subservient to real political services. Far different

were the antecedents, attitude, and influence of the modern Anglo-Irish aristocracy. Suddenly created by recent conquest and confiscation; for the most part adventurers who, even when residents, handed over their acquisitions to new settlers who repeated the same process; without resources for improving, or disposition to improve, their properties, the new landed proprietary of Ireland sank into a mere oligarchy, the more reckless and oppressive to all beneath them as, according to Dean Swift's testimony, they were servile towards the dominant power of England. Deprived of the stimulus of ennobling traditions, and seldom recruited from more intelligent and liberal classes, they never possessed popular sympathies, or rose to the level of so much as industrial feudalism. In England the abuses of their political power by the aristocracy did not exclude at least a partially wise exercise of their local influence as a landed proprietary. But in Ireland the abuse of public office and of private property went hand in hand, and in combination formed one entire system of ascendency-government. To check the injustice and selfishness of authority in high political and local offices,* in the magistracy, in the grand juries and corporations, has been the ceaseless and difficult task of England since, about fifty years ago, she seriously began to reform her Irish policy. But, notwithstanding the indication afforded by Mr. Drummond's famous aphorism, British statesmen and parliaments have never grasped the truth that land-ownership involves social functions as important, and in their nature as truly public, as any political office, or realised the necessity for restraining the abuses of proprietors, who invoke the protection yet ignore the claims of society. Such interference has unhappily been rendered imperative by the traditional conduct of the Anglo-Irish proprietary, and notwithstanding some recent improvement in their attitude, no reform can be complete which does not reach ascendency-government in its inmost sources, social and political, private and public, local as well as general.

The English system of government since the revolution of 1688 has rested, until recent times almost exclusively, on the influence of a local aristocracy, wielding their power through

* The recent dismissal of a high-sheriff for jury-packing is matter of painful notoriety.

honorary offices mainly connected with landed property, but controlled, more or less, by the rivalry of commercial wealth and intelligence and the growth of public opinion. This system, artificially planted in Ireland amidst a needy proprietary, alien from the masses, engendered political corruption and social oppression. If the first of these baneful results has stood in need of correction, so surely must the second. To understand this necessity, let us examine the unchecked workings of landed-proprietary avarice and pride in Ireland. A distinguished apologist of Irish landlordism has represented the system of middlemen as proving the indulgent benevolence of proprietors towards their tenants. But its true character is pourtrayed in the following description by the celebrated Lord Charlemont :—"Farms, of enormous extent, let by their rapacious and indolent proprietors to monopolising land-jobbers, by whom small portions of them were again let and re-let to intermediate oppressors, and by them sub-divided for five times their value, among the wretched starvers upon potatoes and water." Under this system, fostered by the exceptionally high rents produced by the European war and a protective *régime*, the population of Ireland was artificially raised during the hundred years between the middle of the eighteenth to the middle of the nineteenth centuries from about two-and-a-half million to more than eight million souls. The extraordinary increase thus produced by the desire to acquire and spend, was further stimulated to gratify the love of power. The franchise, first conferred on the Roman Catholics by the Irish Parliament in 1793, was a fatal gift. The voters, still disqualified from electing their co-religionists, became puppets in the hands of the great proprietors, whose costly contests, the fruitful source of hopelessly incumbered estates, were carried on with the suffrages of 40s. freeholders, indefinitely multiplied by granting leases for a life or lives. It may be urged that the middle men have almost disappeared, and that votes are no longer manufactured. But, unhappily, these changes, instead of moderating, have rather invigorated the workings of avarice and pride, by giving them a new direction. The establishment in 1838 of the poor-law, soon followed by the revolution in agriculture which the failure of the potato and abolition of the corn laws necessitated, gave a fresh impulse and afforded new pretexts for

extensive clearances and consolidations. Thenceforward the "English system" of farming became the ideal of Irish landowners; but as its genuine social and economic conditions were wanting in Ireland, and, even where feasible, could not be hastily introduced, a sham has been largely substituted, which consists in the wholesale conversion to grazing purposes of land previously arable and much better adapted for a rotation of crops. So also, since the uprising of the peasantry against their landlords at the elections previous to Catholic Emancipation, the granting of leases has become exceptional.

But the political prejudices and fears of landowners are not the only deterrent motives. The love of power for its own sake, conjoined with the spectacle of English tenancy at will, often prevent landlords from making even improving tenants independent of caprice or accident. Only two years ago, at a complimentary dinner given by Lord Fitzwilliam's tenants in the County Wicklow, a Scotch farmer, himself a leaseholder on the same estate, amidst the praises echoed by subservient (because precarious) occupiers, had the manly courage to declare his conviction that the great defect in the management of his lordship's property was the reluctance to grant leases. To the same predilection for a debased counterfeit of the "English system" is due the system of meddling, often oppressive, estate rules, already so prevalent and gradually extending. Avarice and pride thus engender an unintelligent contempt of the Irish system of tenure and agriculture, regardless of its fitness and relative excellence for Ireland.

The historic deduction of actual facts here presented corrects some erroneous views prevalent in England, and extremely prejudicial to the settlement of the Irish land problem. Mr. Horsman, M.P., formerly Chief Secretary for Ireland, has recently said, in true and noble language, "All parties now feel that the Government and Parliament are animated by a spirit of justice and reparation; by a spirit—late, indeed, but true—of contrition for the past wrongs of Ireland." But I regret that he bases his advocacy of land reforms on the alleged over-population of Ireland. Now, looking only at present facts, I believe that Ireland is not overpopulated, but greatly under-cultivated. An excessive population may no doubt be proved by adopting the English or Scotch large-

farm standard; but this, as I hope hereafter to show, is wholly inapplicable to Irish circumstances, and, therefore, affords no fair analogy. Considerable competition certainly exists, but this arises chiefly from the smallness of farms, the existence of numerous accumulations of moderate capital, conjoined with the great hereditary and hitherto unchecked power of the landowners. With a rising population educated in national schools, and many of them imbued with the principles of agriculture through instruction on provincial model farms, placed, with the central institution near Dublin, under the able direction of a gentleman who is convinced, though not in any narrow or exclusive sense, of the great future for small farming in Ireland,* the above view only excites mistrust among the Irish people. The over-population theory represents legislation as an unavoidable but undesirable concession to political agitation; the theory of under-cultivation, coupled with just historic conceptions, places the reform of the law of landlord and tenant in Ireland on its true and permanent basis, and enforces the necessity for adequate restraint on the arbitrary power of owners, with ample encouragement to the outlay and energies of the occupiers of Irish land.

Again, the true history of the relations of landlord and tenant in Ireland demonstrates the total insufficiency of plans that are merely voluntary, and the weakness of many proposals for correcting abuse by inadequate inducements to a right course. Such, I conceive, is that of Mr. Caird. He suggests first, that notices to quit be published in newspapers selected by a commission. I fear that, in Ireland, especially in remote districts, public opinion is altogether too weak to make such a course efficacious, for, unhappily, some of the most extensive and harsh clearances have been effected with general notoriety, and in complete defiance of public censure. Again, the idea of encouraging leases simply by refusing Government loans for land improvement to landlords who do not grant terms of not less than twenty years (apart from the serious objections to any system of mere leases) entirely over-

* Professor Thaer, grandson of the illustrious founder of scientific agriculture in Germany, himself a distinguished professor in the University of Berlin, and a practical farmer, expressed to me his high admiration of the Irish national school text-book on agriculture, written by Mr. Baldwin, director of the Albert Model Farm, with special reference to small farmers.

estimates the disposition of Irish landowners to make improvements, either in itself, or compared with the counteracting influences that discourage the granting of leases. It is, indeed, much to be wished that landlords should have both power and motive to effect arterial drainage and other extensive estate-improvements; but it is far more important that tenants should be enabled and encouraged to make the farm-improvements so much needed. Unfortunately many circumstances prove that a large portion of Irish proprietors will neither make these last, nor allow the occupiers to make them. If such desire existed, how does it come that they tolerate—perhaps tacitly approve—that mere bye-law of the Board of Works which refuses loans for building to improving tenant-farmers whose holdings are valued at less than £50 per annum? Existing facts, therefore, confirm historical deductions, and demonstrate that powerful, and almost coercive inducements can alone suffice to overcome the general bias of Irish landowners towards a so-called but spurious "English system," so congenial to their love of power for its own sake.

4th December, 1869.

LETTER VII.

CONTRASTS OF ENGLISH AND IRISH HISTORY—THE LAND LAWS.

WHEN the late Mr. J. B. Dillon, M.P. for Tipperary, a gentleman remarkable for intelligence and moderation, and much respected by both sides of the House, astonished a select committee by describing the Irish confiscations of the seventeenth century as "very recent," he truly expressed a strong sentiment, shared by large portions of the farming population of Ireland. Yet so strange and almost unexampled a state of feeling may be fully accounted for by one circumstance alone—the long continuance of ascendency-government. Unjust and harsh as was the forced conversion of owners into occupiers, it is possible, even probable, that the descendants of the latter would have accepted their position, had it been rendered tolerable. That such acquiescence has never sprung up, truth obliges me to say is mainly due to the English Land Laws and Courts of Justice. Their practical result has been to complete and intensify the original confiscation of Irish land by a further and perennial confiscation of the only kind of property left to the ejected owner and his posterity, their labour and capital invested for generations in the soil, devoted to creating all that constitutes the farm.

Tenancy at will, converted by construction of law into yearly tenancy, has long constituted the general legal basis of agricultural occupancy both in England and Ireland. In one country, however, the inherent precariousness of that tenure has been partly supplied, partly corrected, but not in the other. English landowners, by making a large outlay on permanent improvements, have so regulated their conduct as to obviate the harsh operation of the feudal maxim, still legally unreversed, which transfers to the owner the capital sunk by the agricultural occupier. In England, again, where the modern progress of scientific practice compelled the

tenant to expend largely on drainage, rotation of crops, and other costly operations which only reimburse after the lapse of several years, the courts of justice stepped in to correct the unjust rigour of the common law. The judges, guided by enlightened public policy, gradually sanctioned various customs calculated to protect the farmer's capital and encourage its free employment, enforcing against unjust landlords agricultural usages which grew up by the express consent, or tacit approval, of fair and honourable proprietors. In Ireland, unhappily, the landowner, with rare and quite recent exceptions, far from regulating his conduct so as to mitigate the injustice of the feudal rule, left the tenant to do everything which was needed to make either farming or habitation possible. Yet the Irish courts of law or equity, under such exceptional circumstances, did nothing to meet the requirements of justice and policy by devising appropriate rules, or even by sanctioning established, practically undisputed, customs. The Irish tenant farmer, therefore, compared with the English, stands at a two-fold disadvantage, being subjected to the active injustice of the fundamental land laws which rob the occupier for the benefit of the owner, and the passive injustice of the courts of justice, regarded as fountains of that judge-made law, so potent and beneficial in England, so neglected and powerless in Ireland. On the present occasion I propose, briefly, to illustrate the first of these contrasts.

The five Irish landowners who constituted the Devon Commission, by their report (1845) have furnished the clearest direct proof of the injustice and impolicy of the feudal rule between landlord and tenant in Ireland. They emphatically state that the Irish landlord had made neither house, office, nor fence—in short, none of those improvements the making of which devolved upon the English proprietor; that everything effected in that way was the work of the Irish tenant; and that agricultural progress was arrested by the universal feeling of insecurity among the farmers of Ireland.

Indirect but even more cogent evidence of the same proposition is afforded by the remarkable contrast between the English and Irish procedure for enforcing the landowners' rights to rent and other incidents of tenancy. In both countries the common law gave the same remedies by distress and ejectment. In England,

the original procedure has sufficed with slight statutory alterations. But in Ireland, the profound practical contrast in the relations of landlord and tenant may be inferred from the extraordinary multiplicity of the statutes which regulate these, the special character of their provisions, and, still more, their almost invariable tendency to strengthen the position of the landowner. In England the payment of rent in arrear is still commonly enforced by distress. In Ireland, owing partly to exceptional powers, now withdrawn, partly to its harsh operation and cruel employment, this remedy has become so odious that a popular *Landowner's Guide* condemns it as "anomalous in its character, demoralising to the tenant, and one whose best corrective has been its practical repudiation by landlords of the better class."

The procedure for recovering possession from a defaulting tenant, known as ejectment for non-payment of rent, is, I believe, rarely practised in England, and is there regulated by a single statute of George II. In Ireland this has been the ordinary remedy, elaborated by a long series of enactments, extending over more than a century. Each succeeding act proposed to render more easy and stringent the landlords' remedy of eviction, and more effectually to prevent the "frauds committed by tenants." Concurrently with these were passed another series of acts for restraining the tenants from "burning the lands," and other practices contrary to good husbandry. But it never occurred to our landowning legislators, in either country, that the constant and ever-increasing difficulty of enforcing even just claims of the landlord, and of preventing injurious acts by the tenant, condemned the system, as one simply repressive and denying all encouragement, especially that best sort, according to Adam Smith and Arthur Young the only sort of encouragement needed—the certainty that a man shall reap the fruit of his own industry. Occasionally, indeed, the legislature caught a glimpse of this truth, as, for example, when a statute of the Irish Parliament under George III., passed for the encouragement of planting trees in Ireland, recites that "it is equal to inheritors whether tenants do not plant, or have a property in what they plant." But in this very enactment the sound principle was rendered nugatory by absurd

conditions and complicated machinery; and such has been the case in every subsequent measure, though professing to secure just and politic benefits to the Irish tenant. Yet the failure did not spring from inability to appreciate the advantages of simplicity, since we find no lack of simplification in the legislation which concerns the Irish landlords' interests.

This gradual simplification of the landowners' remedies in Ireland, and consequent increase of his power over the tenant, is an undeniable fact, conspicuous from the commencement of the eighteenth century down to the present day, yet one that has never received sufficient attention, whether considered as cause or symptom of the evil system. It plainly contradicts the commonly accepted assertion of the essential identity between English and Irish land legislation. The boon conferred on Irish landlords by this simplification of their remedies was enormously enhanced by the organisation in 1800 of the county courts throughout Ireland. Cheap and prompt justice is, doubtless, in itself a blessing; but under Irish circumstances the delay and expense of proceeding in the superior courts at Dublin gave the tenant some protection against avarice and caprice. The local procedure, which embraced the great majority of holdings, being unaccompanied by any legal protection for the industrious and improving tenant, enhanced the landlords' already exorbitant power, and in that respect created a system of prompt and cheap injustice.*

That "reciprocity all on one side," which pre-eminently distinguishes the Anglo-Irish legislation between landlord and tenant, is exhibited in the most recent legislation. The Attorney-General for Ireland of the Conservative Government of 1852-53 (Sir Joseph Napier) introduced four bills for encouraging leases, compensating improving tenants, authorising charges by limited owners for their improvements, and lastly for consolidating the numerous statutes which regulate the rights and remedies of the landlord and tenant. Though falling short of what justice and policy require, these proposals, taken as a whole, not only shocked the sentiments of a landowning legislature, but were much in advance of the measure

* It is true that the tenant, when defendant in the local court, was empowered to plead an "equitable" defence. But, as will be shown, the recognised "equities" were highly technical and of little practical value. Nor could they be enforced by the tenant as plaintiff, except in the Court of Chancery.

which, under the auspices of a nominally Liberal Government, received the sanction of Parliament in 1860.

The enactments then passed for ostensibly encouraging improvements, either by tenants or by limited owners, have remained a dead letter, and the reason of their absolute failure should undoubtedly be sought in their narrow spirit and complex machinery.* But the Irish Landlord and Tenant Consolidation Act of 1860 was no delusion. Special simplifications most favourable to landlords were sanctioned, while compensatory provisions in favour of tenants (including some introduced into the Conservative bills) were either omitted or rendered worthless. A legal hand-book thus states and comments upon one of these novelties:—"The only parties now necessary to be served with an ejectment are the persons in actual possession of the lands as tenants or under-tenants; a change in the law of no small interest to landlords, by dispensing with the necessity of serving the proceedings on all parties claiming any registered estate or interest in the premises." Yet in Ireland a registry of deeds has long existed for protecting the interests of third parties, while the enactment just stated deprives leases, even retrospectively, of that protection, thus endangering actual mortgages, and greatly diminishing the value of leases as a mercantile security. Such was the regard shown by a landlords' parliament for the interests of tenants and the public.

But the most serious innovation made by the Consolidation Act of 1860, is the general alteration of principle justly insisted on by Mr. George Campbell in his valuable essay, "The Irish Land." He observes: "The Act of 1860, putting an end to 'tenure,' putting everything on the footing of contract, and so entirely changing the state of the law as to the relation between landlord and tenant, seems to me more distinct confiscation than anything that has been proposed in favour of the tenant." The particular enactment here referred to is not merely inconsistent with Irish facts, but at variance with the rest of the Act. This clause distinctly contemplates "implied" as well as "express" contracts; in other words,

* See the evidence of Judge Longfield, Mr. J. B. Dillon, Mr. M'Carthy Downing, and other gentlemen, before the select committee on tenure (Ireland), 1865, and Dr. Hancock's criticisms contained in his second report to government (1866), on the landlord and tenant question.

assumes that provision should be made, according to usage or equity, for cases where no agreement has been entered into, yet justice and common sense call for some arrangement. Nevertheless, with some comparatively unimportant exceptions, the feudal rule as to improvements was left in force, and no implication was made by this Act in favour of the tenant, either on equitable grounds or with reference to the existence of well-established usages.

In the above review of land legislation for Ireland, I have unavoidably omitted all present reference to those various and important enactments which ostensibly belong to the criminal law, but really spring from the civil relations of landlord and tenant;—Acts for punishing "wilful trespasses," "Coercion" and "Peace-Preservation" Acts. Their consideration, however, is hardly needed to fortify the description of the civil legislation given in 1843 by the Chief Justice of the Irish Queen's Bench (Pennefather). "The law of landlord and tenant in Ireland is a uniform code giving in each statute new rights to the landlord. It was framed with a view to the interest of the landlord alone; the interest of the tenant never entered into the contemplation of the Legislature."*

Dublin, 18th December, 1869.

* The above sentence is based on a legal tradition, which I believe to be trustworthy. The authorised report (5 Irish Law Reports, p. 287), revised, no doubt, as customary, by the judge, has toned down the strong expression of a disagreeable truth. But the following extracts from the printed report of C.-J. Pennefather's judgment, in substance confirm the words as handed down, and are the more remarkable because they show that the learned judge plainly approved of the policy of the Irish land legislation, and did not intend to pronounce its condemnation:—"I look upon the legislation upon this subject as a progressive code having the benefit of the landlord in view, and giving in each successive Act additional remedies to the landlord. . . . There are a great variety of statutes regulating the law of ejectment in this country. There has been shown by the legislature an anxious desire to give an easier remedy to the landlord for the recovery of his rent, and to prevent frauds from being committed by the tenant. As the devices by the tenant increased, so, in process of time, a variety of Acts were passed for the purpose of assisting the landlord, and putting an end to frauds committed by the tenant. . . . The first of these acts to which I shall refer is the 9 Anne c. 8. It shows that it was not the object of the legislature to regard the preservation of the common law. . . . Considering the progressive nature of this code—each successive Act providing new and additional remedies—there is no reason why ingenuity should not be used in extending the remedies intended for landlords."

LETTER VIII.

CONTRASTS OF ENGLISH AND IRISH HISTORY—THE COURTS OF JUSTICE.

HAVING pointed out the active injustice wrought by applying feudal land-laws to Irish circumstances wanting the essential features that rendered the operation of those principles tolerable in the country of their birth, I next proceed to consider the passive injustice of the tribunals which neglected and refused to employ those judicial correctives of harsh rules which even the legal precedents of England should have suggested as being at once justifiable and needful in Ireland. That such a course was never taken by the Irish bench, either in the courts of common law or of equity, affords a melancholy and striking proof of the continuous and wide-spread influence of ascendency-government, understood not simply as importing religious exclusiveness, but the prevalence of class rule, and the alienation of the governing from the governed. In fact, the very circumstances that created this antagonism in Ireland have tended to perpetuate it, and still largely operate to check a genuinely social growth. Let it be remembered that, from the time of James the First to the reign of William the Third, the whole effort of government was directed towards establishing a new basis for English rule in Ireland, a process in no small degree served by placing on the bench judges persuaded of the absolute superiority of English law, and slavishly disposed to uphold its technical rules and constitutional fictions in total disregard of Irish facts. Be it further remembered that during the 18th century and down to Catholic Emancipation (1829) the Irish bench was exclusively occupied* by men who, however

* It is often stated or implied that the "penal laws" were long since repealed. But the above exclusion from the highest judicial offices was partially continued in force for nearly forty years after the Emancipation Act. The recent statute which opened the Lord Chancellorship of Ireland, irrespective of religious creed, retained the disability which precludes the Lord-Lieutenancy from being held by a member of the Church which owns the allegiance of the great majority of the Irish people.

eminent in ability, belonged to the small, but all-powerful, body which virtually monopolised the territorial wealth and ruling power of Ireland. In a country long singularly devoid of manufacturing and commercial activity, and possessing no recognised organs of Liberal public opinion, the Irish Bar was composed of sons and relatives of the landed aristocracy, whose circumstances and education unavoidably gave them a bias, unconscious in some cases, but always real and powerful, against the just claims of the mass of subject tenantry, whether Catholic, Presbyterian, or even Episcopalian. These considerations explain the remarkable deficiency, in the modern jurisprudence of Ireland, of those qualifications of stringent feudal land-laws which should have been suggested by Irish facts, and would certainly have prevailed had her bar and bench been so constituted as to allow of their imbibing popular sympathies.

Notwithstanding the immense variety of modern statutes, a very large, and perhaps the most important, portion of English jurisprudence, even at the present day, consists of judge-made law. As industrial society with its manifold wants and new relations took the place of military life, the narrow structure of feudal law was gradually enlarged into a more commodious edifice. The courts of equity acquired a new importance and enlarged their jurisdiction, supplying the defects and mitigating the harshness of the common law, not seldom even overriding express contracts in favour of presumed intention, and substantial justice. At a later period the courts of common law themselves, not only imported into their decisions larger conceptions unknown to earlier judges, but manifested a just and increasing respect for the spontaneous growth of customary practices. Thus by equitable innovations and by sanctioning established usages, the Superior Courts assumed a quasi-legislative function. The beneficial operation of their new attitude, though more conspicuous as regarded manufactures and commerce, was not wanting in reference to agriculture. The close connection always subsisting between the bar and the landed aristocracy doubtless narrowed the sphere of judge-made law as affecting that strongbold of feudalism the land-laws;* but it is

* This influence is strongly shown in the liberal judicial decisions which created the modern law of manufacturing and commercial fixtures, as contrasted with those reducing within very narrow limits the right to remove agricultural fixtures.

certain also that the conduct of the English landlords, as before mentioned, rendered judicial intervention much less needed to prevent unjust rules leading to actual injustice.

A few illustrations may suffice to show both the need for Ireland, and the possibility, even in accordance with English analogies, of the judicial rectification of rules legally in force, but plainly at variance with social facts. Courts of equity in both countries have long acted on the principle that an owner of land who knowingly allows another party to make improvements under circumstances which fairly raise a *bonâ fide* belief that the latter will not be disturbed, is guilty of a fraud if he violates that understanding, and can only resume possession of his property thus improved on making compensation to the improver. This doctrine is no doubt surrounded by limitations which were probably suggested by the fact that in England the occupier rarely made permanent improvements, except on the faith or promise of a lease. But in Ireland the principle could only be made operative by giving it a much wider application—one commensurate with the general fact that Irish tenants, though holding by a simple yearly tenure, were required, rather than allowed, and often expressly encouraged, to erect houses, offices, fences, and, in short, do everything without which he could neither live nor farm. In a recent case (O'Fay *v.* Burke) the tenant, a parish priest, took a farm on the promise of a lease, which, from defect of power, the landlord, himself only a life owner, could not carry out. The tenant, nevertheless, continued as a yearly holder, and made considerable permanent improvements. The life-owner died, when his son and successor gave notice to all his yearly tenants of a rise in their rents. Thereupon, the above tenant put forward the promise to him of a lease. In consequence, the agent of the new owner, who was then living abroad, did not raise the rent on that farm, and the absentee landlord allowed the tenant to remain in possession and to expend £400 in buildings. A private dispute having arisen, the tenant was ejected by the same landlord. The former brought a suit in the Court of Chancery, which decided that it had no power to enforce execution of the promise of a lease or compensation for the improvements. But the then Master of the Rolls strongly condemned the English precedents as an "artificial system," which

compelled him "to administer injustice." The Court of Appeal, while confirming the judgment, declared that the landlord would "best maintain the character and honour of a British officer, satisfy the exigencies of justice, and uphold the rights of property by making such an arrangement with Dr. O'Fay, as to the possession of this farm, as might leave him the full benefit of an expenditure *made in good faith, and with the reasonable expectation of having the full benefit of it sufficiently secured by an undisturbed possession.*" The words italicised indicate the full length to which the equitable doctrine referred to might have been carried had an early and enlightened jurisprudence been formed by applying English principles to Irish facts.* The need of such was enhanced by other circumstances, also mainly peculiar to Ireland, especially the prevalence of settlements without any sufficient leasing powers, and the system of middle-men holding by terminable leases.†

The same disregard of characteristic facts, and slowness to apply admitted principles of English judge-made law, are equally conspicuous in reference to its second great branch—legalised custom.‡ The so-called tenant-right of Ulster has never received judicial sanction, although it has long practically governed the relation of landlord and tenant throughout the Northern Province. The tenant-right consists in a claim of the out-going tenant or his representatives to transfer for value the occupation-interest, subject to the landlord's approval of the incoming tenant, and on condition of making arrears of rent the first charge on the price. This

* Mr. M'Lagan, M.P., in his recent pamphlet—"Land Culture and Land Tenure in Ireland"—the fruit of two months' careful inquiry on the spot, and which, though containing some prepositions requiring, I think, considerable qualification, is a most valuable contribution to the Irish land question, speaking of capricious evictions, and arbitrary raising of rents, makes the following just remarks (p. 45):—"Any law, then, which allows such injustice, oppression, and cruelty, and which puts the tenant at the absolute mercy of the landlord, should not exist. I know that I shall be answered by some sagacious wiseacres in this country, "Why were the tenants such fools as to build houses on land not theirs without a title?" This I shall answer by putting another question, "Why did the landlord or his agent, or both, allow these tenants to build or carry out agricultural improvements on his land for perhaps a century, knowing that they were confiding in his or his forefather's honour, which should be more binding on a gentleman than laws, and not warn them off his estate till the tenants' property had become of great value?"

† Such was the case of "Kilkee," commented upon by Mr. Mill.

‡ The extent and gradual growth of modern agricultural customs, sanctioned by law, was well investigated by the select committee which reported on Mr Pusey's Tenants' Compensation Bill of 1849. The copyhold system was established centuries ago, by a judicial resolution, which treated the owner who violated the custom of the manor as a trespasser.

occupation-interest embraces two elements, closely connected, but more or less distinct—a claim of goodwill in respect of continuous occupancy, and a claim for improvements of every sort, inherited, purchased, or made by the occupier. The amount thus claimed is usually regulated by a customary standard, which is tolerably fixed in each district, but varies somewhat with the condition of the farm, and sometimes with other and temporary circumstances,—all of them, however, being ascertainable in each particular case, and entering into the market price of tenant-right. The transfer is made with the full knowledge and consent of the landlord, who accepts the incoming tenant, and settles with him the future yearly rent. The due observance of the custom requires that the new rent, if raised, should be fixed at such a rate as not to interfere with the customary value of the occupation interest. The purchase money is paid to the tenant, usually through the agent, if arrears exist, these being first deducted, but in any case with his consent.* The only objection of any weight to the legal recognition of this custom rests, I conceive, on a misconception. It is alleged that the usage is indefinite. But, although the English law refuses to sanction any custom which has not sufficient certainty, it does not require an unvarying rule or numerical precision, but deems that certain which can be rendered so, and ascertained. Now, as the market price of this, like other commodities, is ascertainable, it is difficult to see why the law should not have recognised dealings which for generations have been carried on without any practical difficulty. Whatever objections may abstractedly be urged against the Ulster custom, its enforcement surely ought not to have been deemed unreasonable against landowners who expressly recognised and largely profited by it, both as securing their rents and promoting the general peace and prosperity of the province.†

The mischief arising from the disregard shown by the courts

* Of late years, on many estates, the tenant-right has been expressly limited by the landlords to a certain sum; but unless in cases when they resume possession, this restriction is of no avail, and only occasions the secret payment of the balance required to make up the market price.

† Mr. M'Lagan observes (p. 72), "So general is the recognition of tenant-right in Ulster by custom, that if it had been in England it would have been recognised by law long ago; and I can see no objection to its being done in Ireland at once."

of law and equity to Irish facts extended far beyond the particular acts of injustice thus permitted and encouraged. Their passive attitude produced several indirect but very injurious effects. It discouraged such a gradual spread and consolidation of just relations, founded on custom and equity, as would almost certainly have taken place had the legal standard been brought into harmony with the conduct of good landlords.* It has also, by giving free scope to the abuses of power, taken away those incentives to wise legislation which, had they been supplied, might have long since induced the landowners of Ireland to seek statutable powers of leasing and improving, akin to those which, just one hundred years ago, were obtained by the Scotch landlords, and have been so beneficially exercised by them. The combined operations of the land laws and courts of justice, acting upon Irish facts, has been to place Irish proprietors in the invidious and dangerous position of men who reap where they never sowed, at the expense of those who have toiled and spent. This result is placed in a striking light by the following extract from Mr. Caird's recent pamphlet ("The Irish Land Question"), though I think it gives too much prominence to the mere influence of competition, and does not dwell sufficiently on the continuous and (taken in the aggregate) very large expenditure by Irish tenants: "Since Arthur Young's time, now ninety years ago, the rental of the two countries up to the date of the potato famine in 1846 appears to have progressed in a nearly equal ratio. To attain this gradual increase the landowners of Great Britain made continuous and great expenditure upon their property in buildings, fences, roads, and drainage, amounting in the aggregate to probably not less than one-third of the fee-simple value of their estates. Their present rental thus embraces a return for the land itself, and for the capital likewise spent upon it. The Irish landlord, favoured by the deceitful prosperity of that country up to 1846, in a rapidly increasing population, and a constantly augmenting competition for land under potato farming, seems to have drawn an equal return from his property without being called on for any capital beyond the mere land itself. His

* I may refer to the remarks of the *Times'* commissioner, in his letters upon Ireland, and of Mr. M'Lagan, in his recent pamphlet upon the tenant-right customs in the North as compared with those in the South.

prosperity being based on the potato husbandry, collapsed with it, for a time; but in the last five years Irish farmers have been doing well, and rents are again creeping up under the influence of competition, and irrespective of landlords' expenditure."

Dublin, 1st January, 1870.

LETTER IX.

CONTRASTS OF ENGLISH AND IRISH HISTORY.—INDUSTRY.—CAPITAL.—THE POOR LAWS.

HAVING already dwelt upon the historic contrasts between England and Ireland as regards religion and politics, I finally turn to those which concern the industrial aspects of society. English industry in all three branches, agricultural, manufacturing, and commercial, besides its great natural advantages, has long enjoyed two social conditions essential to success—first, security and freedom for capital; secondly, provision for the distressed labourer.

The preceding letters have, I think, sufficiently shown how entirely the first of these conditions has been frustrated in the case of Irish agriculture. Down to nearly the close of the eighteenth century, which witnessed the marvellous development of British industry, obstructive legislation checked the rise, or assisted the downfall, of Irish commerce, and, with one notable exception, of Irish manufactures. But inasmuch as the chief restrictions were removed long even before the general abolition of protectionist policy in England, I am not disposed to dwell on this painful topic. The subject, however, is not merely a thing of the past, since a retrospective view strengthens the belief that, had the exceptional justice, and indeed favour, shown to the linen trade of Ulster been extended to other branches, they might, and some of them, in all likelihood, would, have prospered no less than that has done. After making every fair allowance for the natural inferiority of Ireland in the great mineral treasures of coal and iron, the economic and social disadvantages of every kind to which she was so long, and, as regards agricultural industry, still is, exposed, furnish, I think, a subject for serious reflection, and raise a just claim for liberal assistance towards public works of real and general utility, and

even to some kinds of industrial enterprise which, in a wealthier country, might be wholly left to private energy.

But whatever room there may be for difference on this head, there can be none as to the flagrant inequality between the English and Irish poor-law.* The former dates from the reign of Queen Elizabeth (43 Eliz. 1,601), and gave a right to relief which was intended as a substitute for the charity formerly administered by the religious orders. The conviction of its necessity was forced upon the Government of Elizabeth by seventy years' experience of the crime which resulted from the sudden withdrawal of all relief by the suppression of the monasteries. The new system, like the earlier one, was essentially based upon outdoor relief, and great abuses undoubtedly crept in, chiefly owing to the public relief being made supplemental to wages. As a corrective for this and other mischiefs, some leading advisers in English poor-law reform strongly urged the abolition of out-door relief, and the forcing of all distressed persons into workhouses. Happily these counsels did not prevail, for the English Act of 1834 conferred very extensive powers upon the Poor-law Board, under which they have gradually created a system of mixed in and out-door relief, at once rational and humane. The reformed English poor-law, as actually administered, has for many years past aimed at two leading objects—first, a provision, adequate but not excessive, for those cases of inevitable misfortune, want of work, sickness of the labourer himself or his family, widowhood, orphanage, and old age, which must occur in every branch of industry; secondly a provision on a more liberal though not extravagant scale for destitution of rarer occurrence, but such as does inevitably, and not infrequently, arise from unforeseen fluctuations in the industrial system, or in special branches of manufacture and trade. The former class of regulations chiefly affect the agricultural districts; the latter the metropolis and manufacturing and commercial centres. The ordinary and less liberal *régime* in England is based upon the so-called "Prohibitory Order of 1844." Estimating the population by the census of 1861, this would embrace, in round

* For the following statement I am largely indebted to the valuable essays by Dr. Ingram, F.T.C.D., "Considerations on the State of Ireland," second edition, with an appendix, 1864; and Dr. Hancock, "Lecture on the History of the Irish Poor Laws," 1862.

numbers, 13 millions, or 65 per cent of the whole. The extraordinary and more liberal system of relief is based upon the "Out-relief Regulation Order of 1852," and this, on the like computation, would comprehend seven millions or 35 per cent of the English population. The "Prohibitory Order of 1844" approximates most nearly to the principle of making willingness to enter a poorhouse the test of distress entitling to public relief, but this is subject to several most important qualifications. Even able-bodied men and women are, in England, entitled to outdoor relief in cases of sudden and urgent necessity, or of sickness, accident, or infirmity, mental or bodily, whether this affects the applicant or any member of his or her family, or for defraying burial expenses. Moreover, any widow is, in England, entitled to receive out-door relief during the first six months of her widowhood, and may continue to do so if she has to support even a single legitimate child. Provision is also made by the order of 1844 for granting outdoor relief to the families of prisoners, lunatics, soldiers, sailors, and marines, and to wives deserted by their husbands.

Such is the ordinary English poor-law *régime*, and even this is not wanting in wise and humane consideration for the poor. But the out-relief order of 1852 goes much further. In places where it is in force the guardians may, at their discretion, give weekly out-door relief to indigent persons, though able-bodied, one-half of such relief, at least, being given in food, fuel, or other articles of absolute necessity. *Male* applicants for such relief must not be in receipt of wages, and must be kept employed by the guardians. But these two conditions are not imperative, and may be set aside under circumstances of urgency, sickness, and all other cases specified as qualifying for out-door relief under the order of 1844. Moreover, the guardians may, under special circumstances, at their own discretion, depart from the order of 1852, provided they report the deviation, with their reasons, to the Poor-law Board within twenty-one days. This elastic English poor-law system has accordingly sufficed, not only to meet the trying fluctuations of such frequent occurrence in manufacturing and commercial districts, but extraordinary and severe crises, and notably that which was caused in Lancashire by the recent civil war in the United States.

Turning next to Ireland, what do we find? Until the passing of the first Irish Poor-law Act, in 1838, the poor almost entirely supported the poor. This Act and the subsequent amending Act of 1847 established the system now in force. This is distinguished from the English by several marked features. The destitute in England have since the Act of Elizabeth had a legal right to relief in some form. The Irish poor cannot compel the granting of relief except in cases where the applicant is affected by old age and infirmity, or sickness or serious accident, and of widows having at least two legitimate children dependent on them. Again, no out-door relief can be given on the ground of urgency (except in case of eviction), or for sickness, accident, or infirmity affecting the family and not the head, or to a widow, unless she has at least *two* legitimate children, or to the families of prisoners, lunatics, soldiers, sailors, or marines, or to wives or children deserted by their husbands or fathers. In addition to these broader features of distinction between the English and Irish poor-laws, there are other minor, but important, differences, and in these, as Dr. Ingram observes, "the superiority as regards humanity and liberality is almost always on the side of the English system."

The Irish poor-law, therefore, deviates greatly from the English system of relief as created by the order of 1844. But their wide divergence is most clearly marked by the fact that Ireland has no system of relief at all corresponding to that enjoyed by the English poor under the out-relief order of 1852; yet the Irish metropolis and centres of manufactures and commercial industry require its application quite as much. Moreover, the main industry of Ireland, her agriculture, has peculiar features which, it seems to me, call for a liberal and flexible *régime* at least approximating to that created by the English order of 1852. A large proportion of Irish agricultural labourers still want constant employment, owing to the absence, mainly caused by insecurity of tenure, of those permanent improvements which afford regular work all the year round, and especially in the winter season. Periods of distress among the smaller farmers are sometimes produced by causes beyond their control, as from the three bad seasons of 1860-1, 1861-2, and 1862-3. Nor, taking into account the great changes during the last twenty years in Ireland, especially the extensive consolidation

of farms, the great and continuing impulse to emigration, and the wide-spread influence of popular education—do I see any valid reason for believing that a more liberal system of relief would entail the evil results often charged on the English and Scotch systems. Public opinion tends this way, for, so far as the law permits, the Irish Boards of Guardians have of late years progressively spent a larger proportion on out-door relief.* But the entire mass of the Irish farming population above the condition of mere labourers are practically deprived of all benefit from the poor law by the provision (10 Vict. c 31, sec. 10, as amended by 25 and 26 Vict. c. 83, sec. 2), which denies out-door relief to every person in occupation of more than one quarter of a statute acre. Thus the Irish cottier, or small farmer, has no claim for out-door relief under temporary suspense of work, or unusual distress, or even in the case of sickness, whether of himself or any member of his family.

The inequality between the English and Irish poor-law is strongly marked in two other particulars. Union rating, recently established in England, after a hard battle, has been succesfully resisted by the landowners of Ireland, although greatly needed.† Secondly, the Irish poor resident in England are subject to the English law of settlement, which now requires at least one year's residence in the district where relief is sought, whereas no such condition is imposed upon any English person becoming destitute in Ireland. The condition referred to, I believe, frequently produces great hardship, and interferes with the migration of labour, rendered inevitable by industrial fluctuations. There seems also to be room for a more just and liberal administration of the Eng-

* In the year 1863, out of 317,624 persons relieved in Ireland, only 28,911 received out-door relief. In 1867, out of 317,346, the number so relieved rose to 58,696. The following table shows the number of persons respectively relieved in England and Wales on the 1st of January, 1869, and in Ireland at the close of the first week of the same month and year:—

	In-door.	Percentage of whole.	Out-door.	Percentage of whole.
England and Wales	163,071	15·6	876,478	84·4
Ireland	39,614	69·6	17,320	30·4

† About 120,000 agricultural holdings, or 20 per cent of the whole number, are less than five English acres; and a large proportion of these are potato grounds, auxiliary to other means of support. In a parliamentary borough (New Ross) with a population exceeding 7,000 persons, I find that the average poor rate for the years 1862 to 1869 has been 4s. 7d. in the pound, whilst the highest poor rate on the electoral divisions of the union of New Ross (exclusive of the town) for the year 1869, amounts to 1s. 10d., three divisions being rated respectively as low as 4d., 6d., and 7d.

lish poor-law towards the large Irish population resident in many parts of England.*

One injurious social effect proceeding from the severity of the Irish poor-law is well pointed out by Dr. Hancock, in his remarks, contained in the "Criminal and Judicial Statistics for 1868" (pp. 10, 11), from which I extract the following passage: "The excess of vagrants and tramps of all ages in Ireland, as compared with an equal proportion of the population of England and Wales, is very small, when the difference between the proportion of the poor in receipt of poor-law relief in Ireland and in England and Wales is taken into consideration. The average daily number in receipt of relief in 1868-9 was 53,757 in workhouses, and 16,862 out-door, or 70,619 in all, being 168,238 less than the number (238,857) in receipt of relief in 1868, in a portion of the population of England and Wales equal to that of Ireland." The establishment of the Irish poor-law in 1838 stimulated landowners to provide employment.† I cannot doubt that a wise and liberal extension of its provisions would have greatly strengthened these dispositions. It is even possible that landlords might in this way have been, sooner and more generally, led to give the tenant farmers a security calculated to promote those permanent improvements which raise wages and afford continuous employment. But the history of the Irish poor-law, unhappily, proves the existence, and illustrates the policy of that ascendency-government already often referred to. Formerly one-sided legislation was justified by the alleged impossibility of applying principles of English justice to Ireland. But of late years the ground has been changed. It is urged that the "English system" should be extended impartially to this country; but the proposed measure often proves to be wanting in all the essentials of the original. Thus the Irish poor-law of 1838 was avowedly based on the notion that the old English system of out-door relief had been wholly abolished by the Act of 1834. But in point of fact, this *doctrinaire* idea was never carried into effect in England. Experience demonstrated its insufficiency, and, happily,

* I refer particularly to the alleged illegal deportations of Irish paupers to Ireland, and the refusal to appoint Catholic chaplains to workhouses in places where the Irish population is very large—for example, as has been stated, in Liverpool.

† See the remarks of Mr. M'Lennan, in his Memoir of Thomas Drummond, p. 382.

the English Poor-law Board were endowed with large powers, which they exercised by creating the system administered under the orders of 1844 and 1852. But the Irish Acts confer no such power on the Poor-law Commissioners, who, therefore, are legally disqualified from making those gradual alterations, the want of which was discovered and remedied in England.

Dublin, 15th January, 1870.

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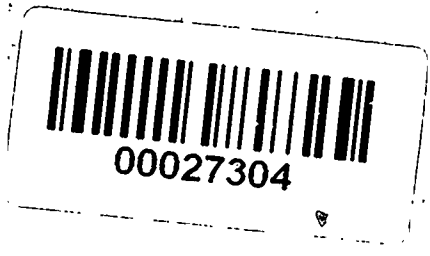
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